Supreme Court, U.S.
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In The

Supreme Court of the United States

AUGUSTUS J. SIMMONS,

Petitioner,

vs.

HORACE B. WETHERALL, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS
Petitioner
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156pp

QUESTION PRESENTED

DID THE CONNECTICUT SUPREME COURT TRANSGRESS THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FEDERAL CONSTITUTION WHERE: WITHOUT ANY NOTICE OR SERVICE OF PROCESS; WITHOUT ANY CONSTITUTIONAL VALUATIONS OR JUST COMPENSATION; WITHOUT ANY PLEADINGS, HEARINGS, DECISIONS, JUDGMENTS, OR MESNE PROCESS DUE TO THE LACK OF BOTH JURISDICTION OF THE SUBJECT MATTER AND PARTIES BY THE LEGALLY ORGANIZED COURT (SUPERIOR) BELOW – THE ACT OF THE STATE SUPREME COURT GIVING A STATUTE (SPECIAL ACT #170 (1969)) A NEW CONSTRUCTION THAT DENIED RIGHTS UNDER THE CONSTITUTION WHEN IT TRANSMOGRIFIED PLAINTIFF'S – UNADDRESSED – PRIVATE TORT ACTION (#163875) INTO A PUBLIC REAL PROPERTY "F-R-E-E-Z-I-N-G" FOR A FEDERALLY INSTALLED, MAINTAINED, AND OCCUPIED AIRCRAFT NAVIGATIONAL INSTRUMENTATION SYSTEM OF OVER THIRTY-SIX (36) YEARS DURATION ON PLAINTIFF'S PARCEL "C," THAT APPEARS ON THE FACE OF THE RECORD.

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OPINION BELOW

Plaintiffs MOTION TO VACATE dated May 1, 2000 with sixteen (16) supporting exhibits is incorporated in the APPENDIX at Pages 1 thru 125.

The ORDER, dated May 31, 2000 from the Chief Clerk, Supreme/Appellate Courts reads:

The motion of the plaintiff, filed May 1, 2000, to vacate, having been presented to the court, is hereby ordered – DISMISSED.

It is further ordered that the plaintiff is hereby prohibited from filing pleadings in this court that are related to Docket Number CV 70-0163875.

By the Court,

Francis Drumm
Chief Clerk

JURISDICTION

The jurisdictional basis for the appeal is 28 USC § 1257 which had its origin in the act of September 24, 1789, 1 Stat. 73, 85, by that section, as construed in *Martin v. Hunter's Lessee*, 14 U.S. 1 Wheat. 304, 364, 42 L.Ed. 97 (1816), strongly reinforced by *Cohens v. Commonwealth of Virginia*, 6 Wheat. 264, 5 L.Ed. 257 (1821), the denial of a claim of a federal right in the final judgment of the

highest available court of a state could be brought for review at a bar of this court.

STATUTE AND CONSTITUTIONAL PROVISIONS

Art. I § 11 Constitution of Connecticut

The Constitution of Connecticut provides that – "no person shall be deprived of life, liberty, or property, without due process of law."

Amendment XIV, Constitution of the United States

" . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment V, Constitution of the United States

" . . . nor shall private property be taken for public use without just compensation."

49 CFR § 24.102 BASIC ACQUISITION POLICIES

(a) *Expeditious Acquisition.* The agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to Owner.* As soon as feasible, the owner shall be notified of the agency's interest in acquiring the real property and the BASIC PROTECTIONS, including the agency's obligation to secure an appraisal, provided to the owner by law and this part.

(c) *Appraisal, Waiver Thereof, and Invitation to Owner.* (1) Before the initiation of negotiations the real property

to be acquired shall be appraised, except as provided in § 24.102 (c) (2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(d) *Establishment and Offer of Just Compensation.* Before the initiation of negotiations, the agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. Promptly thereafter, the agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary Statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include: (1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated. (2) A description and location identification of the real property and the interest in the real property to be acquired. (3) An identification of the buildings, structures, and other improvements which are to be considered to be part of the real property for which the offer of just compensation is made.

(f) *Basic Negotiation Procedures.* The agency shall make reasonable efforts to contact the owner or the

owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with 49 C.F.R. § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The agency shall consider the owner's presentation.

(g) *Updating Offer of Just Compensation.* If the information presented by the owner, or a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the agency shall have the appraisal(s) updated or obtain a new appraisal. If the latest appraisal information indicates that a change in the purchase offer is warranted, the agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive Action.* The agency shall not advance the time of condemnation or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative Settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized

agency official approves such administrative settlement as being reasonable, prudent, and in the public interest.

(j) *Payment Before Taking Possession.* Before requiring the owner to surrender possession of the real property, the agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic Remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

(l) *Inverse Condemnation.* If the agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair Rental.* If the agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by

the agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

STATEMENT OF THE CASE

This case is an AIRPORT-related case that transcends back to a 1955 Federal-Aid Grant Agreement between federal and state agencies wherein the state agency (Connecticut Dept. of Transportation) was obligated under the grant agreement to acquire "satisfactory property interests" as defined in 14 C.F.R. § 152.3 for what would ultimately become a navigational servitude imposed upon the owner by the federal agency (F.A.A.) with the invasion, appropriation, installation on the surface of the real property, sophisticated navigational instrumentation controlling ingress and egress of air traffic at Bradley Airport, Connecticut's premier airport in the summer of 1962.

Starting on February 28, 1962 with a tortious course of conduct, the state agency initiated the first condemnation that was negated by the courts as arbitrary, unconstitutional with procedural problems (153 Conn. 351 (1966)) and was remanded.

In January, 1968 the state instituted condemnation proceedings a second time under Conn. General Statute § 48-12, in lieu of C.G.S. § 15-79 and again the court ruled the proceeding "null and void". (160 Conn. 492 (1971))

During the 1969 session of the Connecticut Legislature a special act was passed by the general assembly

allowing Augustus Simmons to sue the state for DAMAGES over "loss of use of land" arising out of the bumbling condemnation proceedings. On January 5, 1970 Plaintiff/Owner Simmons brought such a suit *Simmons v. Wetherall,* Docket #163875 which had several hearing dates scheduled that were all aborted. To date, damages have not been addressed and the action is still pending.

During the summer of 1974 the federal agency, F.A.A., without having paid any compensation, intended to upgrade the navigational servitude with the addition of a "middle marker" on private property and in lieu of negotiating a lease with the owner, enters into a lease with the sponsor of the airport, notwithstanding they had full knowledge that title reverted back to the owner on the land records on March 24, 1972 after the second condemnation was ruled null and void.

In December, 1977, plaintiff retained the firm of Rogin-Hirtle, Esq.'s to represent him upon scheduled days for hearings in damages before referee Shapiro and the very first act of private counsel was an attempt to give the state (and the F.A.A.) "complete insulation from and absolution from all of its sins" by invalidating the hearings in damages and for which a dismissal, discharge, in writing, was hand delivered on December 23, 1977. The discharge of 12/23/1977 was not sufficient to curb the tortious course of conduct.

Where the matter of subject matter jurisdiction and of indispensable parties was ARGUED before the court of competent jurisdiction, Hon. Dupont, A., on June 7, 1982 and the STATE vigorously and vehemently challenged the superior court with lack of subject matter jurisdiction and

the court, so recognizing, denied compensation from the slush fund to indispensable parties (VALENTE-ALLAIRE), yet, did not, would not set aside the void decree due to a supreme court ruling under *Simmons v. Wetherall*, 180 Conn. 587 (1980).

Where the "Slush Fund" monies were allowed to remain before the court from 1978 to 1991 before returning said monies to the state treasury, signifies FEDERAL QUESTION VIOLATIONS of the most severe nature, extending indefinitely the original unlawful, unconstitutional entry by the F.A.A. and the State of Connecticut.

REASONS FOR GRANTING THE WRIT

1. Where all states, including Connecticut, must comply with the land acquisition procedures promulgated under the Uniform Real Property Acquisition Act, P.L. 91-646 (1971), 42 USC §§ 4601-4655, where major federal airport projects and federal-aid grant agreements were entered into by federal and state agency's that resulted in the owner being given a WRITTEN NOTICE TO VACATE the farm operation (Ex. #10) making the owner a DISPLACED PERSON under 42 USC § 4601(b) and assured the BASIC PROTECTIONS under 49 CFR § 24.102 and the procedural assurances of 49 USC § 4655.

2. Where plaintiff's claim is one arising under the federal constitution, the question whether the plaintiff has been accorded due process of law – using that term in its primary sense of an opportunity to be heard and to defend its substantive right, for, if permitted to stand,

deprivation of plaintiff's property is accomplished without its ever having had an opportunity to defend against the exaction.

3. Where the unconstitutional acts of the state led to the legislation by the state legislature (Special Act #170 (1969)) requiring compensation for such damages having accrued under which the VESTED PROPERTY RIGHTS of the plaintiffs are asserted, and such legislation was buttressed with FEDERAL LEGISLATION, Title III of Public Law 91-646 (1971) (42 USC §§ 4601-4655) that is applicable where federal projects and grant agreements are at issue, such vested rights cannot be DENIED, DEPRIVED, DESTROYED of the right so vested, by the state Supreme Court without a violation of rights guaranteed by the Fifth and Fourteenth Amendments.

A state statute giving compensation for consequential damages does not merely provide a remedy but creates a property right; to repeal, destroy, invalidate such a statute so as to affect rights actually obtained thereunder is a deprivation of property without due process of law as guaranteed by the Fourteenth Amendment. *Ettor v. Tacoma*, 228 U.S. 148 (1913).

4. Where the federal guaranty of due process under federal regulations is mandated in the Federal Grant Agreement #9-06-009-5708, Sec. 2 (b) (Ex. # 10) the sponsor shall:

"Carry out and complete the project in accordance with the terms of this offer, and the Federal Airport Act and the regulations promulgated thereunder by the administrator in effect on the date of this offer, which act and regulations are incorporated herein and made a part

hereof," has been totally and completely ignored, disregarded, the federal guaranty of due process that extends to state action through its judicial as well as through its legislative, executive, and administrative branches of government mandates compliance with the agreement – "understood and agreed by and between the parties hereto (Sec. 9)" – to the following insertion.

"The airport approach standards to be followed in performing the covenants contained in this paragraph shall be those established by the administrator in office of airports drawing No. 814, dated April 26, 1950 unless otherwise authorized by the administrator."

Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was afforded to him some real opportunity to protect it. *Postal Telegraph Cable Co. v. Newport*, 247 U.S. 464, 475-6.

5. The Connecticut Supreme Court has indicated on several occasions that the Doctrine of Sovereign Immunity is not available to the state as a defense to claims for just compensation arising under ARTICLE FIRST, Section 11, of the Connecticut Constitution. *Textron v. Wood*, 167 Conn. 334, 342 (1974). "When possession has been taken from the owner, he is constitutionally entitled to any damages which he may have suffered, and if our statute failed to provide a remedy he could, nevertheless, sue to recover such damages, 6 Nichols, Eminent Domain, Section 26.42[1]." *Trumbull v. Ehrsam*, 148 Conn. 47, 55-56.

"We have further stated that for this reason, 'where the state takes property no specific permission to sue is

necessary.' " *Anselmo v. Cox*, 135 Conn. 78, 81, "State officials cannot . . . shield themselves with sovereign immunity if a party alleges and proves they took or retained his property in a manner which was either unconstitutional or unauthorized by statute." *Simmons v. Parizek*, 158 Conn. 304, 307. See also 49 Am. Jur., States, Territories, and Dependencies, Sec. 113; Davis, Administrative Law Treatise, Vol. 3, Sec. 27.03.

Since the legislature granted "SPECIAL PERMISSION" notwithstanding any other state statutes or federal regulations, that the defendants have been acting illegally, unconstitutionally, and in excess of any statutory authority, the action is not to be treated as one against the state before it can be maintained. *Weaver v. Ives*, 152 Conn. 586, 591.

6. Plaintiff's Motion to Vacate presents a very substantial federal question of thirty-six (36) years of occupancy without *ANY* just compensation where defendant's, Federal Aviation Administration (FAA), acting as trespassers, has not paid any just compensation under the Federal Grant Agreement (Ex. #10) to the state or the owner and the federal funds allocated for the project were returned to their general fund and the state agency, not having made any determinations of value, or damages, or written statements of compensation, or mesne process of any nature, the unconstitutional "slush fund," conjured up by discharged and withdrawn private counsel, was returned to the State Treasury by the Superior Court who were without subject matter jurisdiction.

7. Whether the transmogrification by the state Supreme Court of plaintiff's tort action for damages (*Simmons v. Wetherall,* #163875) into a federally occupied eminent domain land "FREEZING" transgressed the due process clause of the Fourteenth Amendment.

8. The denial by the state Supreme Court of access to the state courts for Docket #163875 to pursue – unaddressed – damages – which the state has no power to deny, destroy, invalidate, unless there is, or was, afforded to him some real opportunity to protect it.

Where in plaintiff's pursuit for just compensation in the federal court system plaintiff has been denied access to the federal courts on the theory of RES JUDICATA, AFTER the Second Circuit, Court of Appeals remanded in 472 F.2d 509 (1973) plaintiff's civil rights claim that federal instrument landing system lights were installed on plaintiff's Parcel "C," WITHOUT COMPENSATION, by the federal agency (FAA) and the state was required under the Federal Grant Agreement to get proper TITLE and after two (2) unsuccessful condemnations, TITLE was restored in the owner on the land records in 1972 at Vol. 52, p. 242-243 and TAXES were again being assessed against the owner, not withstanding the federal intrusion and occupancy, and, TITLE remains currently in the plaintiff/owner.

Where the government has denied petitioner economically viable use of the land during the pendency of all suits in both federal and state courts for a TAKING that has been effected by a putative exercise of the POLICE POWER, with reliance upon the unconstitutional application of the state Supreme Court decree – VOID on

the face of the record, the enjoining of plaintiff from further Federal District Court actions and imposing sanctions is an abrogation of the owner's right to seek and determine just compensation under the Fifth and Fourteenth Amendments.

LIST OF FEDERAL COURT PROCEEDINGS

U.S. District Court	U.S. Court of Appeals for the Second Circuit	U.S. Supreme Court
a. H-81-778 (JAC) 1981		
b. H-83-225 (TEC) 1983		
Consolidated-dismissed 8/16/83 (JAC)	83-6257 (83) affirmed	83-1833 cert. denied 10/1/84
c. H-85-45 1985 dismissed	85-6087 (85) affirmed Notice of future sanctions	—
d. H-87-732 (JAC) 1987 dismissed enjoined from further federal district court actions	88-6093 (88) affirmed sanctions imposed	88-693 cert. denied 11/28/88

9. Where real property leases of plaintiff's Parcel "C" were entered into between the sponsor, Connecticut Department of Transportation and the Federal Aviation Administration (FAA) with navigational instrumentation

on the surface of the property, being fully aware there was no action before the court for acquisition, being fully aware the previous actions before the state court were all ruled null and void, being aware neither federal or state agencies paid any compensation to the land owner, being fully aware as TRESPASSERS they were committing an unconstitutional act, still entered into several leases (Ex. #14) of the subject property and the attempt to "CONCEAL" was a misprision of a felony, and, the denial by the state Supreme Court to pursue just compensation (damages) under the #163875 legislative mandate is a grossly unconstitutional federal deprivation of just compensation under the federal constitution – that must be reversed.

10. The state Supreme Court having dismissed plaintiff's MOTION TO VACATE, sua sponte, without deciding whether the allegations, presenting a claim under the equal protection clause, were sustained by proof, this court is pleaded to in prayer for reversal of the state Supreme Court decree and remand the case for further proceedings under federal regulations and procedures as delineated by Sec. 213 of P.L. 91-646 (42 USC § 4633) where the legislative history of the act, which states that: "[I]t is immaterial whether . . . federal funds contribute to the cost of the real property. The controlling point is that the real property must be acquired for a federal or federal financially assisted program or project." H.R. Rep. No. 91-1656, 91st Congress, 2d sess. 1970, reprinted at 1970 U.S. Code Cong. & Ad News 5853 giving as an example a state's acquisition of rights-of-way, for a federal-aid highway, with nonfederal funds. See *City of Columbia, S.C. v. Costle*, 710 F.2d 1009 (1983).

It is unmistakable from the plain language of § 4655 of the Uniform Act that where, as a result of the real property occupancy and the displacement of the plaintiff from the farm operation, the states must comply with the land acquisition procedures specified in § 4651.

It is equally undisputed in the present case that the acquisition of the real property is/was a necessary incident to the construction of federal navigational instrumentation by the federal agency (FAA) for the control of ingress and egress of air traffic to the primary runway at the airport and such construction falls within the provisions of § 4655.

The precise language of § 4655 indicates that a state must be guided, "to the greatest extent practicable under state law" by the § 4651 procedures. The courts have concluded that by "practicable" Congress intended to have the grant recipient comply with the § 4651 procedures to the fullest extent to which it is legally capable of complying under state law. See *Beaird-Poulan, Inc. v. Louisiana Dept. of Highways*, 497 F.2d 54, 58 (5th Cir.) cert. denied, 420 U.S. 990, 95 S. Ct. 1424, 43 L.Ed. 2d 670 (1974); *Whitman v. Missouri State Highway Commission*, 400 F. Supp. 1050, 1066-68.

ARGUMENT

The constitutional validity of a decree by the state Supreme Court acting under a special legislative enactment (Special Act. #170 (1969), *Simmons v. Wetherall*, #163875 (1970)) does not authorize such unconstitutional conduct as was entered in this cause on the land records

but not with the trial court or court of first instance by twice discharged private counsel who had officially withdrawn from representation of the owner on April 19, 1978, prior to entering "supplemental judgments" *ex parte* on June 2nd and 5th on the land records; prior to service of process or publication of notice – that was never made. See *Pennoyer v. Neff*, 95 U.S. 714 (1877), also *Brandriff v. Sellas*, 40 Conn. Sup. 243 (1985), *Marshall v. Clark*, 170 Conn. 199 at 205 (1976), denying all rights to plaintiff upon a seizure of federal grant agreement real property, occupied and used by governmental agency action, F.A.A., who were never mentioned or made a party to any proceedings for airport navigational installations, without condemnation or exercise in eminent domain or payment of just compensation; where plaintiff alleged that the omission of the name, title, and interest, of said plaintiff by said private counsel (Rogin-Hirtle, Esq.'s), or, to serve upon said plaintiff any personal notice of the fact of the filing of the said "supplemental judgment" or of the hearing thereon were and each of them was willful, intentional fraud and done for the purpose of defrauding said plaintiff and depriving it of its said interest in said premises without the basic, fundamental due process of law; whose arbitrary, oppressive, unjust, unconstitutional and fraudulent conduct was terminated with two (2) discharges and a withdrawal from representation on April 19, 1978, prior to "freezing" governmentally occupied real property on June 2nd and 5th without subject matter jurisdiction or jurisdiction of the parties, and, no returns of service to the Superior Court that would give the trial court jurisdiction and where the statute (Special Act # 170) makes provision for damages that was invalidated,

destroyed was an infringement of plaintiff's constitutional rights for just compensation.

Where the Supreme Court dismissed the most recent MOTION TO VACATE, dated May 1, 2000 for assessment of damages, and, where a "TAKING" for public use without compensation can be corrected by payment, while a governmental action that violates due process requirements may be invalidated, without regard to whether compensation is provided and where the highest court of a state transmogrified plaintiff's tort action into an eminent domain action that is repugnant to the Constitution, treaties, laws of the United States, the validity of such exercise is the question for review.

CONCLUSION

As the SUPREME COURT OF CONNECTICUT did not decide whether the allegations under plaintiffs MOTION TO VACATE (May 1, 2000) were sustained by the proof that the state court violated federally protected equal protection and due process rights under the federal constitution. (*Allah v. Superior Court of Cal.*, 871 F.2d 887) and the litigant is stymied by the state procedural ruling from which he cannot appeal, plaintiff prays for review by the SUPREME COURT OF THE UNITED STATES of that ruling (*Lynk v. Laporte*, 789 F2d 554), that is an important public issue.

Respectfully submitted,

AUGUSTUS J. SIMMONS, Petitioner
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

STATE OF CONNECTICUT

SUPREME COURT

NO. HHD CV70-0163875S

AUGUSTUS J. SIMONS [sic]

v.

HORACE B. WETHERALL ET AL. : MAY 31, 2000

ORDER

THE MOTION OF THE PLAINTIFF, FILED MAY 1, 2000, TO VACATE, HAVING BEEN PRESENTED TO THE COURT, IS HEREBY ORDERED **DISMISSED.**

IT IS FURTHER ORDERED THAT THE PLAINTIFF IS HEREBY PROHIBITED FROM FILING PLEADINGS IN THIS COURT THAT ARE RELATED TO DOCKET NUMBER CV70-0163875.

BY THE COURT,

/s/ Francis J. Drummer
CHIEF CLERK

NOTICE SENT: MAY 31, 2000
AUGUSTUS SIMMONS, PRO SE
PAUL K. PERNEREWSKI, ASSISTANT ATTORNEY GENERAL
ROGIN, NASSAU, CAPLAN, LASSMAN & HIRTLE
CLERK, HARTFORD J.D.
HON. JOHN J. LANGENBACH

SUPREME COURT

STATE OF CONNECTICUT

TO THE HONORABLE CHIEF JUSTICE AND MEMBERS OF THE SUPREME COURT

DOCKET # 163875

AUGUSTUS J. SIMMONS

VS. (MAY 1, 2000)

HORACE B. WETHERALL, et al

MOTION TO VACATE

Plaintiff, Augustus J. Simmons, moves the Supreme Court to vacate its prior judgments, decrees, decisions with respect to *Simmons vs. Wetherall*, Docket #163875, VOID ON ITS FACE on account of; IRREGULARITY IN THE JUDGMENT OR ORDER; TOTAL DISREGARD FOR MANDATORY FEDERAL LAW WHERE FEDERAL PROGRAMS, PROJECTS, AND FEDERAL FUNDS FOR AIRPORT PURPOSES ARE AT ISSUE; BY ITS UNJUST, UNCONSTITUTIONAL, UNCONSCIONABLE DECREES HAS DENIED, AND CONTINUES TO DENY JUST COMPENSATION FOR IN EXCESS OF THIRTY-FIVE YEARS; WITHOUT SERVICE OF PROCESS, ACTUAL OR CONSTRUCTIVE; TRANSMOGRIFIED PLAINTIFF'S TORT MATTER INTO AN EMINENT DOMAIN ENDEAVOR; WHERE THE STATE SUPREME COURT BY ITS DECREE BREACHED THE FEDERAL AND STATE CONSTITUTION.

MEMORANDUM OF LAW - AND FACT

1. The rule is formulated in *Prince vs. Thomas*, 11 Conn. 472, as follows: "If a warrant issues from a magistrate or officer of special and limited powers, who has not jurisdiction of the person, subject matter and process, all who are voluntarily and actively engaged in its procurement and execution are trespassers."

2. In this case the jurisdiction over the parties and process turns on the question whether the discharged and withdrawn private counsel (Rogin-Hirtle, esq's) had jurisdiction over the subject matter. "Jurisdiction of the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong." 15 Corpus Jurus, 734, and many cases cited.

3. The Supreme Court of the United States defines jurisdiction as "the right to adjudicate concerning the subject matter in the given case. To constitute this there are three essentials: first, the court must have cognizance of the class of cases to which the one to be adjudged belongs; second, the proper parties must be present; and third, the point decided must be in substance and effect within the issue." *Reynolds vs. Stockton*, 140 U.S. 254, 268, 11 Sup. Ct. 773.

VOID JUDGMENT

4. A judgment void on its face may be vacated upon motion, no matter what length of time has interposed since its rendition; neither is it necessary for the movant to show any meritorious defense, nor can the court

impose any conditions for vacating it. *Harris vs. Hardeman*, 14 How. 337, 14 L. Ed. 444; *Furman vs. Furman*, 60 Am. St. Rep. 642-643; *Blythe & Fargo Co. vs. Swenson*, 15 Utah 345, 49 Pac 1027.

5. The law is thus stated in *Freeman on Judgments* (4th Ed.) § 495: "A judgment pronounced without service of process, actual or constructive, and without the defendant's knowledge that a court had been asked to adjudicate upon his rights is regarded with such disfavor at law that a variety of motions, writs, and proceedings are there provided to overthrow it; and in many courts it is at all times and upon all occasions liable to be entirely disregarded upon having its jurisdictional infirmity exposed. But proceedings in equity are peculiarly appropriate for the exposure of this infirmity. They permit of the formation of issues upon the question of service of process, and of the trial of those issues after full opportunity has been given to those who seek to sustain as well as those who seek to avoid the judgment. If at such trial it satisfactorily appears that the defendant was not summoned and had no notice of the suit, a sufficient excuse is shown for his neglect to defend, and equity will not allow the judgment, if unjust, to be used against him, – *'no matter what jurisdictional recitals it contains.'* " (italics ours)

IRREGULARITIES

6. Relief based on extrinsic evidence may be had against a judgment rendered without notice and service of process, whether by PURCHASE, LEASE, GIFT, EXCHANGE, or the EXERCISE OF EMINENT DOMAIN under C.G.S. §§ 8-129 and 52-57 (manner of service) or 49

C.F.R., Part 24, Subpart B (24.102 – basic acquisition procedure) where federal grant agreements, projects, funds, are at issue as in case at bar, empowering the "Supreme Court" to vacate its own judgments, at any time, on account of "IRREGULARITY IN OBTAINING A JUDGMENT OR ORDER." It needs no extended argument to make the point that no judgment purporting to bind the property of a defendant has any validity unless a means reasonably calculated to give notice to all necessary and indisposable parties has been employed. *Mullane vs. Central Hanover Bank and Trust Co.*, 339 U.S. 30b, 314 94 L. Ed. 865, 870, 70 S.Ct. 652; *Schroeder vs. New York*, 371 U.S. 208, 91 L. Ed. 2d 255, 83 S.Ct. 279 (1962).

7. The Connecticut statutes make detailed provision for such notice and there is little doubt that, if the statutes are followed, the notice requirements of due process will be met. Strict compliance with the notice provisions of the statutes is required under Connecticut law and not to be – "disregarded with impunity nor waived or changed by the courts." *Munger vs. Doolan*, 75 Conn. 656, 659, 55 Atl. 169 (1903), paraphrased with approval in *Carter vs. Carter*, 147 Conn. 238, 242, 159 A 2d 173 (1960).

8. That the *NOTICE* and *SERVICE* requirements under the due process clause were totally and completely disregarded with impunity and deliberate, malvolence [sic] by the Supreme Court of Connecticut, acting in concert with discharged and withdrawn private counsel (Rogin-Hirtle, esq's) is evidenced by the fact that the Superior Court never acquired subject matter jurisdiction or jurisdiction of the parties where there was NO RETURN OF SERVICE to the Superior Court.

9. Where a client has a right to discharge a lawyer, at any time, with or without cause, per rule 1.16 of Practice Book and after the *second* notice the authority, power, right, jurisdiction to act was "surrendered" with a withdrawal upon plaintiff's refusal to tender any deeds or entertain any unconstitutional *"VERBAL"* offers provides the answers to why there is not, was not, could not be any service, hearings, decisions, judgments of or by the Superior Court and the Connecticut Supreme Court acting on the unconstitutional, fraudulent, felonious, in violation of federal and state law post-withdrawal activity of the discharged and withdrawn private counsel (Rogin-Hirtle, esq's) was a breach of the federal and state constitution. The track record to wit:

a) Written discharge on 12/23/77 – Ex. #1

b) Second notice on 4/12/78 – Ex. #2

c) Withdrawal from representation 4/19/78 – Ex. #3

d) (P.J.R) lawsuit against owner for counsel fees 4/20/78 – Ex. #4

10. That there was no notice, service, proceedings, judgments, docket number before the Superior Court was illuminated, made a matter of evidence in August 1979, prior to the Supreme Court decision of May 1980 (180 c 587), wherein Hon. Superior Court Judge John Daly after having granted a motion of Jason Pearl, esq. representing the withdrawn attorney's for unconstitutional funds submitted to the Superior Court by withdrawn counsel, was, on August 30, 1979 VACATED, RESCINDED regards any consideration for compensation upon a submission of a citation from the Chief Clerk of Superior Court (Lucian

Jachomovitz) to the Hon. John Daly. The reason for rescinding was: "Based on *Shelton vs. Wolthausen*, 80 c 599 (furnished by Lucian), I would have no authority to grant this motion. Will you kindly notify Jason Pearl regarding this and if he wishes to argue the matter put it down." Ex. #5

The opening paragraph of Shelton, Supra, reads: "Where money is paid into court in an action to determine its ownership, it is in the custody of the law, and is to be disposed of only through the medium of proceedings had in or relating to that cause." The reason that the unconstitutional funds were returned to the state treasury on December 23, 1991 was the lack of proceedings and jurisdiction by the Superior Court.

11. The land records of the town of East Granby show the court stamp and signature of Thomas Abraham, *PREDECESSOR* to Lucian Jachomovitz on certain of the post-withdrawal activity of Rogin-Hirtle, esq's, including Vol. 59, p. 657-668 that contains a citation at pages 661-662 with a return date of the first Tuesday of July, 1978 that was collusion, conspiracy, a falsification of public documents between the former clerk and the law firm of Rogin-Hirtle. Where the Rogin-Hirtle firm acted – *"as their own sheriff"* after withdrawal and could not serve any of the necessary parties, the listing of a return date was an intentional, felonious falsification of public documents, an improper return day that does not give the court jurisdiction where there was no process of service *BEFORE* or *AFTER* the return day and such proceedings for its enforcement may, in collateral proceedings be disregarded and treated as a nullity. From *Galpin vs. Page*, 18 Wall. 350: "It is a rule as old as the law, and never to be

respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he is duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination. It is judicial usurpation and oppression and never can be upheld where justice is justly administered. * * * "Judgment without jurisdiction is unavailing for any purpose."

Will the court protect and give effect to such a fraud? From *Coit vs. Haven*, 30 Conn. 190 at p. 199: "They say, with great emphasis, and the argument is certainly a forcible one, can it be that a clerk of the court may fabricate a record, or an officer make a false return of service, and yet there be no escape for one who is thus by a judgment in the suit made heavily indebted, or found guilty of a wrong, when in fact he is perfectly innocent, or never owed the debt, and could show it clearly if he had a chance? Will a court, they ask, because it has a general jurisdiction, protect and give effect to such a fraud? . . . "

12. The owner in his Motion to Vacate contends that the discharged and withdrawn private counsel's choice of an improper "bogus" return day of the first Tuesday of July, 1978 was an incurable defect that deprived the court of subject matter jurisdiction. It cannot be disputed that an improper return day affects the court's jurisdiction. *Brandriff vs. Sellas*, 40 Conn. Sup. 243; *Hartford National Bank & Trust Co. vs. Tucker*, 178 Conn. 472, 478-79, 423 A 2d 141 (1979) cert. denied, 445 U.S. 904, 100 S.Ct. 1079, 63

L. Ed. 2d 319 (1980). Having "surrendered" their authority, their right to encumber the property, the incorporation of the return day, regardless what day or month was interjected, it was fraud against the owner, fraud upon the court.

RETURN DAY

13. Section 7767 (51-347) of the general statutes expressly provides that process in civil actions returnable to the Superior Court – "shall be returned . . . to the clerk of such court at least six days before the return day." The statute is MANDATORY and failure to return the process to court within the time limited renders the attachment proceedings fatally defective. *Daley vs. Board of Police Commissioners*, 133 Conn. 716, 719; *Hartley vs. Vitiello*, 113 Conn. 74, 79; *Safford vs. Morris Metal Products Co.*, 99 Conn. 372, 376; *Chevalier vs. Wakefield*, 85 Conn. 374, 375; *Dillon vs. Fahey*, 88 Conn. 605, 607; *Gaylord vs. Payne*, 3 Conn. 258; *Lamothe vs. Gordon*, 15 Conn. Sup. 504; *Musial vs. State*, 3 Conn Sup. 159, 160; see also *Jepsen vs. Toni Co.*, 20 Conn. Sup. 287, 295. See also #8 and #10 of this motion.

Private councel [sic] (Rogin-Hirtle) having "surrendered" their authority, their right to encumber or delegate to a sheriff the compliance with the return day mandate, regardless of what day or month was an intentional, malicious, federal and state constitutional violation with malicious overtones, that was nullified with the owner filing a "DISSOLUTION OF ATTACHMENTS PURSUANT TO CGS § 52-327 on December 2, 1996. Ex. #6

The owner/plaintiff/defendant's motion that the process be vacated because it was not returned to court in accordance with statutory requirements – APPEARS UPON THE FACE OF THE RECORD.

Owner's Motion to Vacate – must be granted – because the process was not returned not later than six days before the return day. *Jepsen vs. Toni Co.*, Supra, at page 294.

JUDGMENT – RETURN DAY

14. Judgment can only be entered *AFTER* jurisdiction of the parties is acquired in the manner prescribed by law and does not transcend, in the extent or character of its judgment, the law which is applicable to it. *O'Leary vs. Waterbury Title Co.*, 117 Conn. 39, 43, 166 A 673.

The rendering of judgments prior to the return day are, *ipso facto*, null and void. *Brandriff vs. Sellas*, 40 C.S. 243, 245.

15. No principle is more universal than that the judgment of a court without jurisdiction is a nullity. *Clover vs. Urban*, 108 Conn. 13, 17, 142 A 389; *Wood vs. Watkinson*, 47 Conn. 500, 503; *Strong vs. Strong*, 8 Conn. 408, 412; I. Freeman Judgments (5th Ed.) p. 668; 31 Am. Jur. 72 § 409. Such a judgment, whenever and wherever declared upon as a source of a right, may always be challenged. Restatement, judgments, § 11 comment c; see *Frick vs. Hartford Life Ins. Co.*, 98 Conn. 251, 255, 119 A 229. This does not offend the full faith and credit clause of the federal Constitution. *Williams vs. North Carolina*, 325 U.S. 226, 229, 65 S.Ct. 1092, 89 L. Ed. 1577; see *Rice vs.*

Rice, 134 Conn. 440, 445, 58 A 2d 523; *Hooker vs. Hooker*, 130 Conn. 41, 47, 32 A 2d 68. Nor does it violate the principles of comity. *Freund vs. Burns*, 131 Conn. 380, 385, 40 A 2d 754.

16. Where the record is ultra clear the DISCHARGED ATTORNEY'S ARE ENCUMBERING THE REAL PROPERTY ON JUNE 2nd and 5th, 1978 WITH A "BOGUS" RETURN DAY, is raw "POLICE POWER" that the Connecticut Supreme Court cannot, should not, subscribe to or sanction.

DUE PROCESS IRREGULARITIES

17. That there were NO proceedings, of any nature, at the lower Superior Court level is evidenced by the brief submitted to the Supreme Court by Atty. Ron Cassidento representing the owner (plaintiff/defendant) under *STATE OF CONNECTICUT vs. AUGUSTUS SIMMONS*, Docket #202121 (consolidated appeal) that was *REJECTED* by Chief Appelate [sic] Clerk Francis Drumm and Atty. Cassidento was informed he could *REFILE* under *AUGUSTUS SIMMONS vs. HORACE B. WETHERALL* (consolidated appeal) – BRIEF OF DEFENDANTS-APPELLANTS, not withstanding the owner was the plaintiff in the legislative enactment (Special Act #170-1969, *Simmons vs. Wetherall*). Such TRANSMOGRIFICATION is unconstitutional and a gross abuse of the due process clause. Ex. #7

Under federal question in *Standard Oil Co. vs. Missouri*, 32 Supreme Court at page 409 the court is quoted: "Though the court may possess jurisdiction of a cause, of the subject matter, and of the parties, it is still limited in

its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by the law. IF THE ACTION BE FOR LIBEL OR PERSONAL TORT, THE COURT CANNOT ORDER IN THE CASE A SPECIFIC PERFORMANCE OF A CONTRACT."

18. On March 17, 1982 *AFTER* the Supreme Court decision of 1980 (180 c 587), a memorandum re "STATES MOTION FOR ORDER OF TRANSFER OF MONIES ON DEPOSIT WITH CLERK," the Hon. Dupont, A. recognizing there was no proceedings or docket number before the Superior Court through which unconstitutional funds could be dispersed, attempted to create a *COMMISSIONER OF TRANSPORTATION vs. DIAMOND* case and the clerk was directed to assign a docket number. Jerome Diamond was a lien-holder as listed on the town of East Granby land records and referenced in the *"BOGUS"* citation at Vol. 59, p. 661-2.

On July 9, 1982 Hon. Dupont, A. RESCINDED her own order contending there is no necessity to establish a separate docket number for *Commissioner of Transportation vs. Diamond*, an appearance in the instant case has now been filed by Leonidas D. Simmons.

What is implied by the "instant case" is uncertain, but what is certain is there was no notice, no service, no compensation was ever paid or made available to Leonidas D. Simmons, notwithstanding a claim was made, consequently the encumberance is still on the land records. Ex. #8

19. Where the owner, Augustus J. Simmons was intentionally, prejudically [sic], maliciously – OMITTED –

for notice, service, or hearing before a competent tribunal which would give the property owner an opportunity to be heard or require the party recording lien to demonstrate in any way the probability of prevailing on the underlying action, there is no valid attachment of real estate. *Harwood vs. United States Shipping Board Corp.*, 300 F 433 (District Court of Connecticut March 24, 1924).

NEVER, in a thousand years, can title to the real property at issue be acquired without a listing for notice, service, and, a day in court – *OF THE OWNER*, and where federal regulations, 14 CFR § 152.3 (basic acquisition policies) requires a "satisfactory property interest," free of liens or encumberances, and, where federal programs, projects, and, or assistance are involved as in case at bar mandating, ON ALL STATES, compliance with the basic acquisition procedures promulgated pursuant to the Uniform Real Property Acquisition Act (P. L. 91-646, 42 U.S.C. §§ 4651-4655, the ANSWER becomes obvious – it was not an oversight; it was not a mistake; it was not unfamiliarity with overriding federal law – it was intentional, malicious, unconstitutional, "COERCIVE ACTION," prohibited under 49 C.F.R. § 24.102 (h) of federal regulations.

20. On June 8, 1982 hearing was held before Hon. Dupont, A., on the motions of Atty. Walter Bass representing lien-holders "Valente" and "Allaire" requesting their liens be paid off from the unconstitutional funds that were with the clerk of the Superior Court, using the argument that the court had already paid Rogin-Hirtle esq's, Jerome Diamond, and taxes to town of East Granby. Notwithstanding the previous payments alluded to, the

payment of compensation to "Valente" and "Allaire" was *DENIED* pursuant to the dichotomy that transpired.

The Attorney General's office directed a challenge to the Superior Court with lack of subject matter jurisdiction and jurisdiction of the parties (trans. p. 17-18). Atty. Walter Bass made a profound statement to the court at (page 26 trans.) substantiating the lack of jurisdiction by the court claiming: "First of all, I would object to Mr. Feingold at this time questioning the jurisdiction of the court to hear the case. SECONDLY, Your Honor, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the court that in the citation, my two clients were listed under the care of my office. I will state to the court that I have never been served with any citation nor has my clients ever been served with any kind of citation to give us any notice to come in to determine what our priorities are in this matter." (transcript 6/7/82) Ex. #9

A decree, judgment, order against a person on whom no process has been served is not erroneous and voidable, but upon principles of natural justice, and also under the due process clause of the 14th Amendment is absolutely VOID. *Marshall vs. Holmes*, 141 U.S. 589, *Simon vs. Southern Railway*, 236 U.S. 115.

21. SERVICE with the complaint is necessary under Connecticut statutes for an action to commence in Connecticut. *Young vs. Margiotta*, 136 Conn. 429, 433, 71 A 2d 924, 926 (1950). The procedural statute, C.G.S. § 8-129 imposes a statutory duty for service in accord with C.G.S.

§ 52-57. C.G.S. § 8-129 is applicable whether by PURCHASE, LEASE, GIFT, EXCHANGE, or the EXERCISE OF EMINENT DOMAIN.

CLEARLY, such extrinsic evidence proves beyond any shadow of doubt that the preceding documentation of June 1982, makes the Supreme Court of Connecticut decree of May 1980, a DECREE – VOID ON ITS FACE, a breach of the federal and state Constitution.

FEDERAL OR STATE REGULATIONS

22. Where the first piece of correspondence addressed to the owner in 1960 made reference to a 1955 agreement between the state and federal agencies and an examination of such 1955 federal-aid grant agreement makes very clear that acquisition must be made pursuant to federal regulations of the "Doolittle Clear Zone" on plaintiff's Parcel "C." Ex. #10

23. Where the legislature enacted C.G.S. 13b-50 sec(d) as the state statute that governs in the case at bar; where the courts have previously in *New Haven vs. East Haven*, 35 Conn. Sup. 157 (1977) made clear the airport, BY FEDERAL REGULATIONS, is authorized to acquire land to maintain airport approach zones, including clear and transition zones (14 C.F.R. § 152.85(d) (1977)); where *NO* proceedings under federal or state law were instituted to give the Superior Court jurisdiction, it was grave unconstitutional error for the state Supreme Court to transmogrify plaintiff's tort action, that was never addressed, into a judgment for land confiscation.

24. From 47 AM JUR 2d JUDGMENTS §§ 752, 753, "It is an acknowledged principle of . . . every court in the world, that not only the decisions, but everything done under the judicial process of courts not having jurisdiction are *ipso facto* VOID." *Martin vs. Hunters Lessee*, 14 U.S. 1 Wheat, 304; 364, 42 L. Ed. 97 (1816); *Chrysler Credit Corp. vs. Fairfield Chrysler Plymouth Inc.*, 180 Conn. 223, 229, 429 A 2d 487 (1980); *Marshall vs. Clark*, 170 Conn. 199, 205, 365 A 2d 1202 (1976).

25. Where the federal agency, Federal Aviation Administration (F.A.A.), through its agent, Connecticut Department of Transportation (CDOT) used and occupied land belonging to, and of value to, plaintiff's Parcel "C," and the United States made no payments to the plaintiff, or, to the state agency for reasons apparent at first instance, for the use and occupance, or for any other purpose, and under current standards is responsible for ninety percent (90%) of the acquisition cost, and the unconstitutional funds before the Superior Court clerk that could not be paid for lack of jurisdiction and were returned to the state treasury, as was the allocated federal funds that were returned to their general fund. The United States Supreme Court has observed whether a claim that a particular government regulation or action taken thereon has deprived a claimant of his property without just compensation is an "essentially ad hoc factual inquir[y]." *Penn Central Transportation Co. vs. New York City*, 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L. Ed. 2d 631 (1977), reh. denied, 439 U.S. 883, 99 S.Ct. 226, 58 L. Ed. 2d 198 (1978) see also *Keystone Bituminous Coal Assn. vs. DeBenedictis*, 480 U.S. 470, 473-74, 107 S.Ct. 1232, 94 L. Ed.

2d 472 (1987); *Pennsylvania Coal Co. vs. Mahon*, 260 U.S. 393, 413, 43 S.Ct. 158, 67 L. Ed. 2d 322 (1922).

26. 42 U.S.C. § 4651 of Title III, mandatory on all states no later than July 1, 1972 provides that, "[i]n order to encourage and expedite the acquisition of real property by agreements with owner, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many federal programs, and to promote public confidence in federal land acquisition practices" the agency seeking to acquire real property shall – 1) make every reasonable effort to acquire property by negotiation, 2) appraise the property before the initiation of negotiations, with the owner present, if he wishes, at that appraisal, and 3) make an initial WRITTEN offer to the landowner to acquire the property for the full appraisal amount.

That there was no valuation or determination, of any nature, no written statements of compensation submitted to the court, the owner, the town clerk, as required by federal regulations and state statutes is UNDISPUTED. Since the UNITED STATES effectively appropriated the land in question for an ascertainable period, thereby interfering with a recognizable interest of plaintiff, the UNITED STATES is obliged to pay plaintiff the fair rental value of that property for the period involved. *United States vs. General Motors Corp.*, 323 U.S. 373, 382 (1945); *Kimball Laundry Co. vs. United States*, 338 U.S. 1, 7 (1949); *United States vs. 40.379 Square Feet of Land*, 58 F. Supp. 246, 250-52 (D.C. Mass. 1944); *Jacobsen vs. Superior Court*, 192 Cal. 319, 219 Pac. 986 (1923).

27. The loss of plaintiffs Parcel "C" involved in this case was not merely incidental or indirect consequences of a taking of other property, rather, it was the direct product of the actual invasion or taking of the property involved. *United States vs. Causby*, 328 U.S. 256, 265-66 (1946). And, "it is the character of the invasion, not the amount of damage resulting from it, so long as the damage is substantial, that determines the question whether it is a taking." *United States vs. Cress*, 243 U.S. 316 (1917).

PLEADINGS, ISSUES, PRAYERS FOR RELIEF

28. WHERE THERE WAS NO NOTICE, NO SERVICE, NO RETURN OF PROCESS TO THE SUPERIOR COURT, WHERE THERE ARE NO PLEADINGS, NO HEARINGS BEFORE THE SUPERIOR COURT AND, WHERE THERE WAS AN ACTUAL ADJUDICATION IN THE SUPERIOR COURT on June 7, 1982 before Hon. Dupont, A. of subject matter jurisdiction and jurisdiction of the parties, a motion to vacate the decree of the Supreme Court (180 Conn. 587) – is appropriate.

29. It is Hornbook Law that "any judgment should conform to pleadings, issues, and prayers for relief." *Kawasaki, Kissen, Kaisha, Ltd. vs. Indomar, Ltd.*, 173 Conn. 269, 377 A 2d 316; *Brill vs. Ulrey*, 159 Conn. 371, 269 A 2d 262; *Morici vs. Jarvie*, 137 Conn. 97, 75 A 2d 47; *Shaw vs. Spelke*, 110 Conn. 208, 147 A 675; *Steinmetz vs. Steinmetz*, 125 Conn. 663, 7 A 2d 915. The Connecticut Supreme Court had occasion to discuss this principle in *New Haven Sandblast Co. vs. Dreisbach*, 104 Conn. 322, 330, 133 A 99. In that case, the court stated:

"A defect in a judgment arising from the fact that the matter decided was not embraced within the issue has not, it would seem, received much judicial consideration. And yet I cannot doubt that, upon general principles, such a defect must avoid judgment."

At 133 A 102 (citation omitted), the court also stated, quoting Blackon Judgments (2d Ed.) Vol. 1 § 215

"Besides jurisdiction of the person of the defendant and of the general subject-matter of the action, it is necessary to the validity of the judgment that the court should have had jurisdiction over the precise question which its judgment assumes to decide, or of the particular remedy or relief which it assumes to grant * * * and third, the point decided must be in substance and effect, within the issue.

30. Finally, the court cited with approval the case of *Lilly vs. Claypool*, 53 S.E. 22, 24, 59 W. Va. 130, 133: "There is no principle better settled than that a judgment or decree cannot be entered in the absence of pleadings upon which to found the same." 133 A at 102 (citations) (see also *Case vs. Bush*, 93 Conn. 550, 552, 106 A 822 – indicating that the variance between the judgment and the issues raised is jurisdictional.)

31. It is significant that in *New Haven Sandblast Co.*, Supra, the court was asked to issue a ruling based upon stipulated, rather than actual facts. The court expressly found that the agreement of the parties was not sufficient to constitute a waiver and could not "confer jurisdiction upon the trial court."

32. Where federal grant agreements, federal projects, federal funds are at issue as in case at bar and subject to the regulations promulgated pursuant to the mandate of the Uniform Real Property Acquisition Act, P.L. 91-646 42 U.S.C. §§ 4601-4655 and Title III (42 U.S.C. 4651-4655) is binding on every state in the union, *Connecticut is no exception.* The precise language of 42 U.S.C. § 4655 of the act, indicates that a state must be guided, "to the greatest extent practicable under state law," by the § 4651 procedures to the fullest extent to which it is legally capable of complying under state law. *Beard-Poulan Inc. vs. Louisiana Dept. of Highways,* 497 F 2d 54, 58 (5 cir.), cert. denied, 420 U. S. 990, 95 S.Ct. 1424, 43 L. Ed. 2d 670 (1974); *Witman vs. Missouri State Hwy Comm.,* 406 F. Supp. 1050, 1060-68 Cw. D. Mo. (1975); *City of Columbia, S.C. vs. Costle,* 710 F 2d 1009 (1983).

33. Where the Connecticut legislature, at the request of the Connecticut Department of Transportation, enacted C.G.S. 48-17 a, b, c, in 1971 to be in compliance with the mandates of the federal legislation (Uniform Act) and 48-17 a, b, c, – SUPERSEDES – Special Act #170 (1969), the fact that private counsel (Rogin-Hirtle) INVALIDATED the hearings on damages under the special act, the 5th and 14th Amendments of the Constitution PROHIBIT such invalidation for fair and just compensation under 48-17 a, b, c, and the Connecticut Supreme Court cannot entertain, participate, direct, or order any FINAL JUDGMENTS without compliance with such mandated federal legislation under the equal protection clause of the Constitution.

34. Inasmuch as the federal regulations are applicable, binding, mandatory, where FEDERAL-AID is assured

as in case at bar, the "acquiring agency," that was clarified with an amended public law 100-17 in 1987 by the United States Congress, was obligated under 49 C.F.R. § 24.102 (b), *notice to owner* to: As soon as feasible, the owner shall be notified of the agency's interest in acquiring the real property and the *BASIC PROTECTIONS*, including the agency's obligation to secure an appraisal, provided to the owner by law and this part (emphasis ours).

35. Where the discharged and withdrawn private counsel (Rogin-Hirtle) was acting as "the acquiring agency," partaking in the act to DENY, DEFY the BASIC PROTECTIONS, to totally and completely disregard the mandatory federal law where federal programs, projects, and federal funds for airport purposes are at issue, such malicious and unconstitutional behavior – CANNOT – be waived by the state Supreme Court.

36. Where adjudication of constitutional infirmity requires a specific showing of personal injury, one need look no further than plaintiff's Exhibit #6 (Dissolution of Attachments), referenced in paragraph's #13, where, in lieu of being paid any fair and just compensation, the owner is obligated to lien-holders while the Federal Aviation Administration (FAA.) enjoys a "FREE RIDE" with the control of the airspace IN, ON, and AROUND plaintiff's Parcel "C."

REFEREE REPORT

37. Where Referee Shapiro was deputized by Hon. Dannehy of Superior Court in 1976 to address damages under Special Act # 170 that never materialized or took

place due to the INVALIDATION by private counsel (Rogin-Hirtle, esq's) who *"USED"* referee in a deceptive manner to put his name on documents filed on the land records by discharged Rogin-Hirtle, but, never submitted any reports, decisions, judgments or opinions back to the Superior Court, further illuminates the IRREGULARITY by the state Supreme Court acting with NO RECORD before the Superior Court.

Referee Shapiro did submit a letter to Jason Pearl, esq. representing the withdrawn Rogin-Hirtle law firm, dated July 18, 1980 *AFTER* the decision by the Supreme Court in May, 1980 wherein he expresses concern over how to proceed legally, that there were several encumberances [sic] with PRIORITIES, and, acknowledging that he is not equipped to give notice to the various creditors – *"which I believe may be necessary"* and referred the matter back to the Superior Court. Ex. # 11

CLEARLY, such extrinsic evidence of July 1980 makes the decree of the state Supreme Court of May 1980 (180 c 587) A DECREE – VOID ON ITS FACE.

HEARINGS

38. The opportunity to be heard at a meaningful time and in a meaningful manner is constitutionally required to meet currently accepted standards of procedural due process in the area of property rights. *Kukanskis vs. Griffith*, 180 Conn. 501. See e.g. *Fuentes vs. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L. Ed. 2d 556 (1972), rehearing denied, 409 U.S. 902, 93 S.Ct. 177, 342 L. Ed. 2d 165 (1972); *Lynch vs. Household Fin. Corp.*, 405 U.S. 538, 92 S.Ct. 1611, 31 L. Ed. 2d 424, rehearing denied, 406 U.S.

911, 92 S.Ct. 1611, 31 L. Ed. 2d 822 (1972); *Sniadach vs. Family Fin. Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L. Ed. 2d 349 (1969); *Mitchell vs. W.T. Grant Co.*, 416 U.S. 600, 94 S.Ct. 1895, 40 L. Ed 2d 406 (1974); *North Georgia Finishing, Inc. vs. Di-Chem. Inc.*, 419 U.S. 601, 95 S.Ct. 719, 42 L. Ed. 2d 751 (1975).

39. THE STATUTES OF CONNECTICUT DO NOT ALLOW THE ATTACHMENT OF REAL PROPERTY INDEFINITELY – WITHOUT A HEARING.

40. *NO* hearings were ever had or permitted, ever, relative to the deprivations on the land records by the Rogin-Hirtle "acquiring agency."

For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified," *Baldwin vs. Hale*, 1 Wall 223, 233. See *Windsor vs. McVeigh*, 93 U.S. 274; *Harvey vs. Elliot*, 167 U.S. 409; *Grannis vs. Ordean*, 234 U.S. 385. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong vs. Manzo*, 380 U.S. 545-552.

In retrospect, how could there be any hearings when *NO MESNE PROCESS* was, or could be, initiated???

In retrospect, how could the state Supreme Court, without any mesne process in the court below, be rendering a decision under *Simmons vs. Wetherall* #163875???

The *FINAL ANSWER* was given to Robert King, esq. on January 4, 1978 by Ed Rogin, Sr., esq. when asked

about the legality of a proceeding without any determinations of value or damages, Mr. King was told: "HE IS AN ALCHOLIC [sic] – HE WON'T KNOW THE DIFFERENCE."

41. Citing *Connecticut vs. Doehr,* 111 S.Ct. 2105 (1991) at page 2118:

The law concerning attachments has rarely, if ever, required defendants to suffer an encumbered title until the case is concluded without any prior opportunity to show that the attachment was unwarranted. Our cases have repeatedly emphasized the importance of providing a prompt post-deprivation hearing at the very least. *See also Matthews vs. Eldridge,* 424 U.S. 319, 343, 344, 96 S.Ct. 893, 907, 47 L. Ed 2d 18 (1976).

COMPENSATION

42. The just compensation clause of the Fifth Amendment made applicable to the states through the Fourteenth Amendment states in clear and unequivocal terms: "[N]or shall private property be taken for public use, without compensation." The government may choose formally to condemn the property or otherwise to continue the offending; in either case the action must be sustained by proper measures of JUST COMPENSATION. *United States vs. Fuller,* 409 U.S. 488, 490-492 (1973); *United States Ex. Rel. TVA vs. Powelson,* 319 U.S. 266, 281-285 (1943).

As soon as private property has been taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has

already suffered a constitutional violation, on "the self executing character of the constitutional provision with respect to compensation," *United States vs. Clarke*, 445 U.S. 253, 257 (1980), quoting J. Sackman, Nichols' Law of Eminent Domain § 25.41 (Rev. 3d Ed. 1980) is triggered.

43. The federal agency, F.A.A., has acknowledged to the owner and in federal court before Hon. Cabranes that it has not made any awards of compensation to the state or the owner for its use and occupancy for the past thirty-six (36) years.

44. The sponsor, Connecticut Department of Transportation, has not made any awards of "legal" compensation to the owner for the past thirty-six (36) years.

45. Whatever illegal, fraudulent, unconstitutional funds submitted to the Superior Court in 1978 by withdrawn and discharged private counsel (Rogin-Hirtle) was returned by the Superior Court to the state treasurer on December 23, 1991, there not being any legal proceedings by which the Superior Court could act. Ex. # 12

46. It is readily apparent the "irregular" decision of the state Supreme Court of May 1980 (180 c 587) did not empower the Superior Court to make any kind of awards of compensation, and, the Superior Court will not, cannot act until the "irregular" decision is VACATED.

14th AMENDMENT INHIBITIONS

47. It is established practice for the Supreme Court to restrain, NOT SANCTION, officers, agents, individual

private attorney's (Rogin-Hirtle) acting as a self-appointed eminent domain authority from doing what the Fourteenth Amendment forbids the state to do. *Chicago B. & O.R. Co. vs. Chicago,* 166 U.S. 226; *Ex Parte Virginia,* 100 U.S. 339, 346, 347; *New Haven Sandblast vs. Dreisbach,* 104 Conn. 322.

The inhibition contained in the Fourteenth Amendment means that no agency of the state, or of the officers or agents by whom her powers are exerted, shall deny any person within her jurisdiction the equal protection of the laws. Whoever by virtue of his public position under a state government deprives another of life, liberty or property, without due process of law, or denies or takes away the equal protection of the laws, violates the inhibition; and as he acts in the name of and for the state, and is clothed with her power, his act is her act. Otherwise, the inhibition has no meaning, and the state has clothed one of her agents with power to annul or evade it.

48. As replacement counsel for hearing in damages under #163875 and 48-17 a, b, c, by hocus-pocus, ipse dixit, INVALIDATE hearing dates for damages, no submissions by private counsel or Referee Shapiro are made to Superior Court, with reckless disregard for controlling federal law, vacate or override all existing court cases and previous decisions, including Connecticut Supreme Court decisions, second circuit federal decisions, usurping power and authority which the court does not have, and, without initiating any proceedings for land acquisition, without complying with conditions precedent imposed by law make the claim – all cases are consolidated – consolidated into what???

49. In an excerpt from transcript of June 7, 1982 (Ex. #9 at page 25) Victor Feingold, Asst. Atty. General addresses the very important compensation issue of *INTEREST.*

"In addition, the question of whether interest accrues on the judgment lien and also it has to be claimed and made certain, because the legislature in enacting the statute on execution on judgment altered the rate of interest which previous to October 1, 1979 was six percent and effective October 1, 1979, it became eight percent. If statutory interest is due on the judgment lien, that must be made known. Well, whether the judgment is based on notes or a higher rate of interest, that survives the judgment, and to be paid until it is fully satisfied – we have no way of knowing."

The owner, having refused to tender any deeds, having spurned the unconstitutional, fraudulent, verbal offer, could not be simultaneously claiming interest.

UNCONSCIONABLE IRREGULARITY

50. The turning back to the treasurer of unconstitutional funds on December 23, 1991 by the Superior Court illuminates the *UNCONSCIONABLE IRREGULARITY* engaged in by Rogin-Hirtle, esq's – and the state Supreme Court. Ex. # 12

FRAUD – DURESS – DECEIT – INTIMIDATION

51. a) Upon discharge (12/23/77) of the Rogin-Hirtle law firm whose assistance was unwanted or undesired and whose representation was trammeled or burdened by

simultaneous representation of defendants (Conn. Dept. of Transp.), plaintiff recruited (new) counsel, Robert King, esq of Nurenburg trial fame who *WAS NOT* permitted to represent plaintiff on Jan. 4, 1978 was DURESS, FRAUD, INTIMIDATION at its lowest level.

b) The "combining of cases" was a deceitful maneuver to remove from court records Docket #162923 that made reference to illegal and unlawful *LEASES*.

c) The INVALIDATION of hearing dates on DAMAGES was an unconstitutional course of conduct for the deprivation of just compensation under the 5th & 14th Amendments.

d) Establishing "fair market value" was totally ignored with no determinations, valuations, appraisals, of any nature.

e) No WRITTEN statements of compensation was ever submitted to the owner, the court, the town clerk as mandated by statute.

f) The vexatious march into the federal court house, after discharge, of two federal court lawsuits remanded by 2nd circuit. Ex. #13

g) No computation of interest that must be awarded pursuant to law.

h) Post-withdrawal, illegal, unconstitutional encumbering of real property. Vol. 59 p. 657-668 with citation at p. 661-2. Ex. #14

i) Acting as "the court" and incorporating such terminology on the land records *AFTER* discharge and withdrawal. Vol. 59 p. 658

j) Acting as their own sheriff on encumbering real property – then stuffing Docket #163875 with a purported service.

k) Submitting spurned unconstitutional funds to the Superior Court under the false impression it was a "condemnation case."

l) Withdrawing funds from unsuspecting Judge Tamborra, being last on the list of encumberers without notice or service to more senior lienholders.

m) Deliberate concealment of illegal, unlawful, fraudulent *LEASES* entered into of plaintiff's Parcel "C" by F.A.A. and Conn. Dept. of Transportation. Ex. #15

n) Intentional, deliberate, pre-planned, "BACKDATING" to avoid compliance with federal law and admitting same on the record of transcript (12/13/1977). No deeds on 4/19/78. Ex. # 16

o) Intentionally, knowingly violating the laws of due process – even after such fact called to their attention by Robert King, esq on January 4, 1978.

PRAYER FOR RELIEF

Where it is part of the judicial function to determine JUST COMPENSATION that must be made at the Superior Court level with the Supreme Court acting in review of final judgments, if necessary.

The IRREGULAR decision of the state Supreme Court, acting as an unconscionable roadblock must be vacated and plaintiff prays the Superior Court be directed

to conclude, pursuant to appropriate statutes and regulations, the Federal-Aid Grant Agreement #9-06-009-5708 of 1955.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons, Plaintiff
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION

Plaintiff/owner, Augustus J. Simmons hereby certifies a copy of this MOTION TO VACATE, and EXHIBITS, was mailed, postage prepaid this first day of May, 2000 to all parties listed.

Copies to:

James F. Sullivan, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Jane F. Garvey, Administrator
Federal Aviation Administration
800 Independence Ave. S.W.
Washington D.C. 20591

Richard Blumenthal, Attorney General
55 Elm Street
Hartford, CT 06106

Michael DiDonato, Chief Clerk
Superior Court
85 Washington Street
Hartford, CT 06106

Rogin, Nassau, Caplan, Lassman & Hirtle
1 City Place
Hartford, CT 06103

Robert S. Bartanowicz, Regional Director
12 New England Executive Park
Burlington, MA 01803

John Malone
State Attorney's Office
State of Connecticut Court House
Enfield, CT 06082

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

APPENDIX

EXHIBIT 1

12/23/77

Dear Mr. Rogin,

I am a totally dissatisfied individual with the "GOOD DEAL" that your firm has arranged with the Dept. of Trans. Concerning my property at Bradley Field.

Because everyone is now in an awkward position upon your firm's insistence of accepting a proposal without the benefit of a Market Research Study by the John Rowlson Firm I am asking the Rogin Firm to withdraw immediately so I can obtain other counsel.

On my visit to your office on Thurs. Dec. 22nd, I told you I wanted to protect my rights against your recommendations. I also compiled some data wherein I showed you and again outline a breakdown of Parcel "C".

Asking me to yield all of Parcel "A" and all damages for absolutely nothing is not representing my best interests.

We'll appreciate an immediate withdrawal.

O. Simmons

Parcel "C" May 1975	382,000
Rental May "76" to May "78" @ 20,000	60,000
Out of Pocket Expense	82,00
	524,000

EXHIBIT 2

4/12/78

Atty Ned Rogin

Received your letter this date which was dated 4/6/78 and mailed 4/11/78. Must inform you there will be no closing on 4/19/78.

This letter is a request the (Rogin-Lassman, Hirtle) firm withdraw from all cases involving Augustus J. Simmons.

Augustus J Simmons

Copies Justice Louis Shapiro
Acct Aty General Fred Neusner

EXHIBIT 3

STATE OF CONNECTICUT	:	SUPERIOR COURT
	:	HARTFORD COUNTY
VS.	:	
	:	APRIL 19, 1978
AUGUSTUS J. SIMMONS	:	

NO. 199230-9

AUGUSTUS J. SIMMONS

VS.

SAMUEL KANELL, ET AL

NO. 140965

STATE OF CONNECTICUT

VS.

ANASTASIA SIMMONS
AUGUSTUS J. SIMMONS
and CHARLES SIMMONS

NO. 162923

AUGUSTUS J. SIMMONS

VS.

FRANK C. PARIZEK, ET AL

NO. 163875

AUGUSTUS J. SIMMONS

VS.

HORACE B. WETHERELL, ET AL

The undersigned respectfully move for the permission of the Court to withdraw as counsel for Augustus J. Simmons in the above-captioned matters.

/s/ Robert L. Hirtle, Jr.
ROGIN, NASSAU, CAPLAN, LASSMAN AND HIRTLE

/s/ David B. Salzman
DAVID B. SALZMAN, ESQUIRE

/s/ Stephen Silverman
STEPHEN SILVERMAN, ESQUIRE

ORDER

The foregoing motion is granted/denied.

BY THE COURT

_____
Clerk

This is to certify that the foregoing has been mailed this day to counsel of record and to the plaintiff.

/s/ Robert L. Hirtle, Jr.
Robert L. Hirtle, Jr.

EXHIBIT 4

DAVID B. SALZMAN, ET AL	:	**SUPERIOR COURT**
	:	**HARTFORD COUNTY**
VS.	:	**APRIL 20, 1978**
AUGUSTUS J. SIMMONS	:	

ORDER GRANTING PRE-JUDGMENT REMEDY
(WITHOUT HEARING)

The application and Affidavit of Plaintiff(s) for Pre-judgment Remedy pursuant to C.G.S. Section 52-278a et seq. as amended, having been presented to the Court and there being probable cause to sustain the validity of the Claim of the Plaintiff(s), it is hereby ORDERED that the Plaintiff(s) may

(a) attach to the sum of **$105,000.00** the real estate standing in the name of the Defendant(s) **Augustus J. Simmons XXXXXXX as described in Schedule a attached hereto.**

Dated at **Hartford, CT** this 20th day of **April** 1978

Illegible
JUDGE

[LOGO] **Cleaveland Legal Blank Service, Inc.**
Hartford, Connecticut

EX PARTE
P.J.R. NO.

APPLICATION FOR PRE-JUDGMENT REMEDY

TO THE SUPERIOR COURT TO BE
HELD IN **HARTFORD**, IN AND FOR

THE COUNTY OF

The undersigned represents:

1. That **DAVID B. SALZMAN, STEPHEN SILVERMAN and ROGIN, NASSAU, CAPLAN, LASSMAN & HIRTLE** is about to commence an action against **AUGUSTUS J. SIMMONS** of **580 Park Avenue, Windsor, CT** pursuant to the attached proposed unsigned Writ, Summons, Complaint and Affidavit.

2. That there is probable cause that a judgment will be rendered in such matter in favor of the applicant and to secure such judgment the applicant seeks an order from this court directing that the following prejudgment remedy be issued to secure the sum of **$105,000.00**

a. To attach the following described real property of the Defendant(s) to Wit:
See attached description (Schedule A)

b. To garnishee ___, as he is the agent, trustee, debtor of said Defendant and has concealed in his hands the goods, effects and estate of said Defendant and is indebted to him.

c. To replevy property described in Exhibit

d. To enjoin the said

his/her/their agents, servants or employees from selling, transferring or encumbering any interest in and to the above-described real property pending further order of this court.

PLAINTIFFS

By /s/ Jason E. Pearl
Jason E. Pearl Attorney

AFFIDAVIT IN SUPPORT OF P.J.R. APPLICATION

I, the undersigned, do make affidavit and say that there is probable cause to sustain the validity of the Plaintiff's claim and

1. That the prejudgment remedy requested is for an attachment of real property; or

2. That there is reasonable likelihood that the defendant:

- ❑ a. Neither resides in nor maintains an office or place of business in this state and is not otherwise subject to jurisdiction over his person by the Court;
- ❑ b. Has hidden or will hide himself so that process cannot be served on him;
- ❑ c. Is about to remove himself or his property from this state;
- ❑ d. Is about to fraudulently dipose [sic] of or has fraudulently disposed of any of his property with intent to hinder, delay or defraud his creditors;
- ❑ e. Has fraudulently hidden or withheld money, property or effects which should be liable to the satisfaction of his debts;

❑ f. Has stated he is insolvent or has stated he is unable to pay his debts as they mature.

I base this upon the following Statement of Facts:

Affiant is an attorney at law who rendered legal services together with the other plaintiffs for the defendant totaling $104,505.00. Defendant has not paid the same, despite demand.

/s/ David Salzman
Plaintiff-Competent Affiant

Subscribed and sworn to before me this April, day of 20th 1977.

/s/ Robert Hirtle
Commissioner of The
Superior Court –

EXHIBIT 5

Law Offices

Jason E. Pearl

19 SOUTH HIGH STREET
POST OFFICE BOX 183

New Britain, Connecticut 06050

Jason E. Pearl *Telephone*
Kenneth J. Spayer *(203) 229-1603*

August 30, 1979

The Honorable John Daly
Superior Court
95 Washington Street
Hartford, CT

Re: David Salzman
Vs: Augustus Simmons
Docket No. 218559 8

Dear Judge:

First of all, welcome back from vacation.

While you were away on August 13 I received a telephone call from one of the assistant clerks advising me that if I wished to reargue my Motion For Turnover dated July 25, 1979, I would have to claim it for the Short Calendar. I was rather taken back by this announcement inasmuch as my file indicates that you granted the motion in open court on July 27, 1979. I recall you speaking to me briefly subsequent to that time indicating that you were going to meet with Mr. Abraham with respect to the order, but you did not indicate to me that you had vacated your prior decision. I would assume that for me to be put into the position of having to "reargue" your

prior decision would have to be revoked. Until that happens, I really do not know what there is for me to argue.

I would be most appreciative of your guidance in this matter.

Yours very truly,

/s/ Jason E. Pearl
Jason E. Pearl, Esq.

JEP/ck
1888

Hearing set up
for 9/12/79 at 2:00 p.m.

Linda:

Based on SHELTON v WOLTHAULEN, 80C 599 (furnished by Lucian) I would have no authority to grant this motion.

Will you kindly notify Jason Pearl regarding this & if he wishes to argue the matter put it down.

Thanks

EXHIBIT 6

December 1, 1996

Town Clerk
Town Hall
9 Center Street
East Granby, CT 06026

Dear Clerk,

The subject matter of this letter pertains to: *DISSOLUTION OF ATTACHMENTS PURSUANT TO C.G.S. § 52-327.*

1. Plaintiff-owner-interested person Augustus J. Simmons requests the following listed encumberances [sic] be endorsed on the record of such attachment with the words *"DISCHARGED BY OPERATION OF LAW"* pursuant to Connecticut General Statute § 52-327.

2. The attachments on the public land records under the caption of *Augustus J. Simmons v Horace B. Wetherall,* CV-70-163875 by private counsel, without any eminent domain proceedings in existence-or-initiated for attachment purposes, without any notice or service of process on interested parties, without any return of service to the court of competent jurisdiction (Superior Court) prior to or after the attachment, and, without appraisals to establish fair-market value that are mandatory, including a transfer of title under plaintiff's private tort action, Docket #163875 are:

Vol. 59, p. 657-668
Vol. 59, p. 654-656
Vol. 59, p. 623-626
Map Book 17, page 853
Map Book 17, page 854

3. Included in Vol. 59, p. 657-668 is a citation at page 661-662 of names of parties and institutions to be served with notice with a return day of the first Tuesday of July, 1978.

4. Vol. 59, p. 661-662 *DOES NOT* list Augustus J. Simmons for notice and service, however, he is still an "interested person," – he just happens to be the owner.

5. That there was *NO* officer's service on any parties, *NO* written return of his (officer's) precept to the court of competent jurisdiction (Superior Court) and *NO* compensation paid is evident in a letter from Atty. Tom Byrne, a copy being submitted as an exhibit showing an encumberance [sic] at Vol. 55, page 731 (1974) of East Granby land records (also listed in the citation at Vol. 59, p. 661-2) that is still outstanding.

The listed attachments in item #2 were recorded on June 2nd and 5th of 1978 which is a much longer period than *FIFTEEN YEARS* from date of attachment.

6. The interested person (owner) submits a sworn testimonial from Atty. Walter Bass before Hon. Dupont, A. on June 7, 1982 representing "Valente's" and "Allaire's" with outstanding liens at Vol. 58, p. 95; Vol. 58, p. 221; 59/253; 59/263; 59/266 (trans. p. 26) that states:

"Your Honor, in Mr. Feingold's recitation that he gave Your Honor this morning, I forget which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the court that in the citation, my two clients were listed under the care of my office. I will state to the court that I have never

been served any citation nor has my clients [sic] even been served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter."

The above citations of Valente and Allaire are (also listed in the citation at Vol. 59, p. 661-2).

7. The caption *Simmons v Wetherall*, #163875, a tort action *AGAINST* the state, a result of Special Act #170 of the 1969 legislature, *CANNOT* be TRANSMOGRIFIED into an eminent domain action by superimposing the Connecticut Department of Transportation as plaintiff (Vol. 59, p. 662), by private counsel, for land acquisition for federal navigational instrumentation projects, per federal grant agreement 9-06-009-5708 (1955), that must be acquired pursuant to federal regulations, constituting a fraudulent encumberance [sic].

8. Under the law of Connecticut, any lien created by attachment continues for 60 days after judgment and no longer. If no execution is taken out before that time, the lien perishes. *Sanford v Pond*, (1871) 37 Conn. 588.

9. Where it is unambiguously clear there was no notice, no service, or, return to the court of competent jurisdiction, no judgment file or record of any kind before the court of competent jurisdiction under Docket #163875, and, the listed return day was the first Tuesday of *July, 1978* (Vol. 59, p. 661) and the attachments were submitted on June 2nd and 5th of 1978, some of which contained a court stamp of the Court Clerk (Thomas H. Abraham) of Superior Court to give the appearance of authenticity to the public is FRAUD upon the court, the

public, and the "interested persons" named in the citation.

Court records show the succeeding Chief Clerk, (Lucian Jachomovitz) informing Hon. Judge John Daly in *August, 1979* there were *NO* proceedings before the Superior Court, consequently the Superior Court was without jurisdiction to act, referencing the citation of *Shelton v Wolthausen*, 80 c 599.

10. Court records show a motion filed with Judge Aronson by plaintiff-owner-interested person (Simmons) that jurisdiction could not be created "sua sponte" in December, 1991 relative to the notice from the court to Atty. Tom Byrne, and others, and as a result of said motion the "slush fund" monies being held under the direction of the court were ABANDONED.

11. Unquestionably, there is [sic] years, not months or days beyond the statutory fifteen (15) years referenced and "DISCHARGED BY OPERATION OF LAW" is the purpose and request of this letter.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

cc: Exhibits

§ 52-327. Duration and release of attachment liens on real estate

No attachment of real estate shall continue in force as a lien for a longer period than fifteen years after the date thereof unless within said period the action in which such attachment was made has been prosecuted to effect and a judgment lien filed according to law. All attachments of real estate which have expired as a lien by the provisions of this section shall be deemed dissolved and the real estate shall be free from any lien or encumbrance by reason of the same and the town clerk of the town in which such real estate is situated shall, upon the request of any person interested, endorse on the record of such attachment the words "discharged by operation of law." (1949 Rev., § 8026.)

CERTIFICATION

Plaintiff-owner-interested person hereby certifies that a copy of this Request of Dissolution Pursuant to C.G.S. § 52-327 will be – hand delivered to:

Chief Clerk
Superior Court (to be put in *Simmons v*
95 Washington St. *Wetherall*, #163875 file)
Hartford, CT 06106

Will be mailed, postage prepaid, first class to:

J. William Burns, Commissioner
Connecticut Department of Transportation
2800 Berlin Turnpike, P.O. Box 317546
Newington, CT 06131-7546

Atty. Tom Byrne
2-E Farmington Commons
790 Farmington Ave.
Farmington, CT 06032

Otto P. Witt, Esq. & Associates
185 Silas Deane Highway
Wethersfield, CT 06109

Robert S. Bartanowicz, Regional Director
Federal Aviation Administration
12 New England Executive Park
Burlington, MA 01803

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

December 1, 1996

Chief Clerk
Superior Court
95 Washington St.
Hartford, CT 06106

Dear Michael,

The attached "Dissolution of Attachments Pursuant to C.G.S. § 52-327" filed under the caption of *Simmons v*

Wetherall, #163875 is being submitted to be made part of the #163875 "damages" file.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

LAW OFFICES

BYRNE & BYRNE
2-E FARMINGTON COMMONS
790 FARMINGTON AVENUE
FARMINGTON, CONNECTICUT 06032

THOMAS P. BYRNE
STEVEN E. BYRNE

TELEPHONE
(203) 677-7355

25 November 1996

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

Dear Ozzie,

The only activity of which I am aware with respect to a mortgage dated July 3, 1974 as recorded in Volume 55 Page 731 of the East Granby Land Records is notice of a hearing to be held before Arnold Aronson, Judge of the Superior Court, on December 23, 1991 to determine the disposition of funds.

Enclosed herewith is a copy of the notice which I received from the court as well as a copy of a letter to me dated

December 19, 1991 from Attorney Walter E. Bass, Jr. I did not attend the hearing of December 23, 1991.

No payments have been received by me on this mortgage.

Very truly yours,

/s/ Thomas P. Byrne
Thomas P. Byrne

TPB:pwb
Encl

AUGUSTUS J SIMMONS VS.
WETHERALL,DEP COMR CV-70-0163875-S

ALL COUNSEL AND PRO SE PARTIES ARE ORDERED TO APPEAR BEFORE THE HONORABLE ARNOLD ARONSON ON MONDAY, DECEMBER 23, 1991 AT 9 30 A.M. IN ROOM 111 AT HARTFORD SUPERIOR COURT, 95 WASHINGTON ST., HARTFORD, CT. A MOTION BY THE COURT TO DETERMINE THE DISPOSITION OF FUNDS WILL BE HEARD.

A COPY OF SAID MOTION WILL BE SENT TO ALL COUNSEL AND PRO SE PARTIESUNDER [sic] SEPARATE COVER.

KAREN PICKER
ASSISTANT CLERK

WALTER E BASS JR
P. O. BOX 289

SUPERIOR COURT
95 WASHINGTON STREET
P.O. DRAWER D, STATION A
HARTFORD, CONNECTICUT 06106
EAST WINDSOR CT 06088

DATED DEC 05, 1991

Law Offices of
Walter E. Bass, Jr.
P.O. Box 289
Warehouse Point, Conn. 06088
Tel. 623-8688 Juris Number 02450

December 19, 1991

Attorney Thomas Byrnes
790 Farmington Avenue
Farmington, CT 06032

RE: Augustus J. Simmons
vs.
Horace Wetherell, et al

Dear Attorney Byrnes:

Please be informed that my office represents several creditors of Mr. Augustus J. Simmons. Please be informed that Judge Arnold Arsonson is holding a hearing on December 23, 1991 at 9:30 a.m. in Courtroom 111 at Hartford Superior Court. Enclosed please find a copy of a Notice which my office has received concerning this hearing. I would like to inform you, that I do believe that you have

an interest in this case. I request that you be present at this hearing. If you have any questions, please feel free to contact my office.

Respectfully,

/s/ Walter E. Fass, Jr.
Walter E. Fass, Jr.

WEBJr./mf

RECEIVED DECEMBER 2, 1996 AT 8:30 A.M.
BY /s/ Laura B. LaFond
ASS'T. TOWN CLERK

Received 12/2, 1976

at 8:30 A.M.

Recorded in EAST GRANBY LAND RECORDS

Volume 112 Page 001

By /s/ Laura B. LaFond
Asst. Town Clerk

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

EXHIBIT 7

STATE OF CONNECTICUT

VS.

AUGUSTUS J. SIMMONS

NO. 20 21 21 - 8

(CONSOLIDATED APPEAL)

HARTFORD COUNTY

BRIEF OF DEFENDANT – APPELLANT

OCTOBER TERM

To be argued by:

Ronald E. Cassidento, Esq.

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EXHIBIT 7

SUPREME COURT

OF THE
State of Connecticut

HARTFORD COUNTY, OCTOBER TERM, 1978

9200

AUGUSTUS J. SIMMONS
vs.
HORACE B. WETHERELL, ET AL

CONSOLIDATED APPEAL

BRIEF OF DEFENDANTS-APPELLANTS

To Be Argued By:

RONALD E. CASSIDENTO, ESQ.

NO. 163875

AUGUSTUS J. SIMMONS	:	SUPERIOR COURT
VS.	:	JUDICIAL DISTRICT
HORACE B. WETHERALL, ET AL.	:	HARTFORD-NEW BRITAIN at HARTFORD
	:	MARCH 17, 1982

MEMORANDUM RE STATE'S MOTION FOR ORDER OF TRANSFER OF MONIES ON DEPOSIT WITH CLERK

(Filed Mar. 17, 1982)

The clerk of the Superior Court currently has possession and custody of $322,402.98, on which no interest has been earned since July, 1981. The Assistant Attorney General was asked by the Federal District Court of Connecticut on February 4, 1982, to apply to this court for an order that the clerk transfer the sum to an interest bearing account. The Attorney General seeks to have the sum, to the extent that it is capable of being divided into denominants of $10,000, invested in Treasury Bills of the United States for a time period not exceeding three months, with excess monies to be invested in an interest bearing statement savings account. The Attorney General seeks, further, that the accounts be held in the name of the clerk of the court and that the clerk be authorized and directed to continue the same investment program from time to time as a "roll over" until subsequent order of the court. The clerk no longer wishes to be the stakeholder under the present condition. The plaintiff, Augustus Simmons, has no objection to the defendant, Attorney General's motion, but does not wish the money to be deposited at Connecticut Bank & Trust, the bank named by the state on its

proposed order. The plaintiff's wife who has filed a lis pendens, arising out of her suit for a dissolution of her marriage to the plaintiff, on the property in dispute, seeks to intervene in this case and seeks by motion to have the sum of $40,000 disbursed to her from the funds being held by the clerk. The plaintiff has no objection to her intervention or to the disbursement. The state objects to the intervention of plaintiff's wife but has no objection to the placement of $42,402.98 in an interest bearing statement savings account.

The plaintiff's wife previously filed an appearance in *Commissioner of Transportation v. Diamond*, et al. (a related case) for which no docket number was ever ascribed and in which she was named as a party.

Without objection, counsel for plaintiff's wife participated in the hearing held on March 1, 1978 on the state's motion which is the subject of this memorandum.

The motion of Leonidas D. Simmons to intervene in this case is denied. The clerk is directed to assign a docket number to *Commissioner of Transportation v. Diamond, et al.* which was returnable in July, 1978, and to properly file her appearance in that case, as well as all pleadings which may belong in that file.

The following ORDER is entered:

1. The clerk of the Superior Court is directed and authorized to transfer $280,000 to Hartford National Bank & Trust Co., Hartford, Conn., c/o Ray Scharfenberger, for investment only in Treasury Bills of the United States for a time period not exceeding three months, and to continue said investment

program from time to time in the nature of a "roll over" account until subsequent order of this court.

2. The clerk of the Superior Court is directed and authorized to transfer $42,402.98 to Hartford National Bank, Hartford, Conn., c/o Ray Scharfenberger, for investment in an interest bearing statement savings account, the sum of at least $40,000 to remain on deposit until such time as it has been determined that said sum should be disbursed to Leonidas D. Simmons.

3. Since investment in Treasury Bills requires a minimal investment of $10,000, but allows investment thereafter in increments of $5,000, and since such investments, in effect, provide for the pre-payment of the interest thereon, monies in excess of a face value of $280,000 will be obtained. Such monies are also to be invested in three month United States Treasury Bills to the extent possible, and to the extent of any excess which does not equal $5,000 are to be placed in the interest bearing statement account to remain on deposit until such time as such monies together with $2,402.98, equal $5,000, at which time they shall be placed for investment in three month Treasury Bills of the United States.

4. No withdrawals or disbursements are to be made from said accounts except upon the further express order of this court.

5. Title to said accounts shall be in the name of the clerk of the Superior Court.

/s/ Dupont, J.
Dupont, J.

EXHIBIT 8

NO. 202121

STATE OF CONNECTICUT : SUPERIOR COURT
VS.
AUGUSTUS J. SIMMONS

NO. 199230

AUGUSTUS J. SIMMONS :
VS.
SAMUEL KANELL,
ET AL.

NO. 140965

STATE OF CONNECTICUT : JUDICIAL DISTRICT OF HARTFORD – NEW BRITAIN AT HARTFORD
VS.
ANASTASIA SIMMONS,
AUGUSTUS J. SIMMONS
AND CHARLES
SIMMONS

NO. 162923

AUGUSTUS J. SIMMONS :
VS.
FRANK C. PARIZEK,
ET AL.

NO. 163875

AUGUSTUS J. SIMMONS : JULY 7, 1982
VS.
HORACE B.
WETHERELL, ET AL.

MEMORANDUM OF DECISION

RE:

MOTIONS FOR DISBURSEMENT OF FUNDS BY CLERK TO PATSY VALENTE AND LEONARD ALLAIRE

A Supplemental Judgment dated June 2, 1978 lists Leonard Allaire and Patsy Valente as holders of a "Judgment" and attachment, respectively. Both claimants were cited to appear before the Court with proof of the amount and validity of their claims. However, on October 15, 1981, the plaintiff, Augustus Simmons filed an action in Federal District Court, seeking as relief, among other things, that a Connecticut Supreme Court decision (reported in 180 Conn. 587 (1980)) upholding the validity of a Stipulation and Judgment pursuant thereto, be vacated. Prior to the filing of the federal action, some of the lienors and encumbrancers were paid pursuant to the Supplemental Judgment. The instant motions were filed on May 25, 1982.

The right to disbursement from the funds held by the Clerk of the Court has been placed in question by the federal litigation. Until such time as it is resolved, the status quo must be preserved.

Motions to disburse denied.

/s/ Dupont, J.
Dupont

EXHIBIT 9

SUPERIOR COURT
JUDICIAL DISTRICT OF HARTFORD/NEW BRITAIN
AT HARTFORD

AGUSTUS J. SIMMONS,	:	
Plaintiff,	:	NO. 163875
vs.	:	June 7, 1982
HORACE B. WETHERALL,	:	
Defendant.	:	

Before:

The Honorable ANTOINETTE L. DUPONT, Judge

APPEARANCES:

For the Plaintiff:

AUGUSTUS J. SIMMONS, Pro Se

For Allaire and Valente:

WALTER E. BASS, JR., ESQ.

VICTOR FEINGOLD, ESQ.
Assistant Attorney General

Harold J. Moan, Sr.
Court Reporter

[2] THE COURT: I have in front of me various motions. Well, one is a motion for disbursement of funds by the clerk. All of these motions relate to the case of

Augustus Simmons versus Howard Wetherall, Et Al, Case Number 163875.

The first motion for disbursement of funds by the clerk is on behalf of Patsy Valente. The second motion is on behalf of Leonard Allaire.

Now, I also have an appearance from Walter Bass, who is present today, and Augustus Simmons who is also present as well as Victor Feingold, who is the Assistant Attorney General. I have affidavits of Augustus Simmons, which are part of the file.

MR. BASS: Your Honor, I have a very short request of the Court. I represent both Mr. Allaire and Mr. Valente. They are relations to Mr. Simmons and –

THE COURT: I have an appearance for Mr. Valente.

MR. BASS: There should be two, but I will submit another appearance for him.

THE COURT: Maybe the clerk has it. I don't.

MR. BASS: Their relationship to Mr. Simmons is that they are former brother and sister- [3] in-laws to Mr. Simmons. The money that is being claimed this morning, your Honor, was money that the Valentes and Allaires have lent Mr. Simmons over a period of time to finance or help finance his legal battles.

Mr. Simmons was never able to pay on any of these notes that he signed with the Valentes or Allaires, and subsequently they came to my office and we started a

collection suit against Mr. Simmons and received judgment and recorded this on the land records going back to 1977-1978.

THE COURT: That was brought in this court?

MR. BASS: Yes, your Honor. Well, two suits. They were both brought within the Hartford County Superior Court.

THE COURT: All right. Both of them went to judgment?

MR. BASS: Yes, and both are recorded on the land records.

THE COURT: There is a judgment lien on the land records?

MR. BASS: Yes, your Honor. Well, one judgment lien in 1977 and one in 1978.

THE COURT: Judgments were in the amount [4] of $3,000?

MR. BASS: No, your Honor. The figure of 3,000 for Mr. Valente and 13,000 for Mr. Allaire includes all interest to date, actually June 24th, 1982, your Honor. It is a total figure and we didn't break it down. We gave a lump sum figure by computation.

THE COURT: That includes interest up to June 24th?

MR. BASS: Yes.

THE COURT: January 4th, '78?

MR. BASS: June 24, 1982, right to this moment.

THE COURT: But from January 4th, '78 to date?

MR. BASS: Yes.

It is our contention that when a state agency condemns anybody's property, that they do deposit money to the clerk, and there has been money deposited to the clerk, according to Section 48-11 of the General Statutes. This money is Mr. Simmons' and is being held through the clerk of the court to make sure that he has the funds for the property that was taken. During the history of this action and since it was deposited with the clerk, there have been several withdrawals, as your Honor may be familiar with. Well, approximately $98,000 [5] was withdrawn from this account from the law firm of Nassau, Rogin & Hirtle, and I forgot the complete name of all the lawyers in there, but for legal representation to Mr. Simmons. There was money set aside for Mr. Simmons' ex-wife, your Honor, and I believe that amount was approximately forty-some-odd thousand dollars. The Texas due the Town of East Granby were also escrowed out of this fund and distributed to the town, as well as money to Mr. Diamond.

In this situation, your Honor, I believe that with Mr. Simmons' consent to have this money withdrawn from his account to pay these people, is a logical consistent act that has been followed through in this file already, your Honor, on three other occasions. We do have Mr. Simmons' consent, and I would ask your Honor, if you determine it so, to withdraw the money to allow us to make this application, that is, to withdraw the money. We ask your Honor to grant it.

THE COURT: Would you like to say anything, Mr. Simmons?

MR. SIMMONS: Yes, your Honor. I would ask that somewhere, at some point, that Mr. Bass would submit to me, to the Court, a specific amount or segregate the amounts of interest versus principal, and the question being a logical one, because somewhere the [6] Internal Revenue will want to catch up with me and say how much was principal and how much was interest. I do feel that I told Mr. Bass, I don't care what the numbers are or how he arrived at them, but I do feel from my point of view and for my protection, I must have a breakdown. Well, however, he arrived at it, I don't care. I am not objecting to the total numbers, but what I am asking for is a separation.

MR. BASS: If I may, your Honor, if the motion is granted, we will provide Mr. Simmons with a complete breakdown.

MR. SIMMONS: He mentioned $198,000, and as your Honor knows, there was 113,000 paid out to the legal firm, just what the records will show. Well, $15,000 additional, which is the figure that was granted. As long as he had mentioned that, I am still waiting on the courts. I know you are stuck with a tacky situation, but I do feel that considerable time has elapsed, and I think that your Honor should bring the gavel down.

THE COURT: Many of the motions I have heard are really interrelated and they address the same kind of question. Hopefully, this will be the last motion and now I can decide the many motions which I have heard so far.

MR. SIMMONS: Yes. Mr. Bass also mentioned [7] $40,000. Well, I can't let the opportunity go without commenting that I had an opportunity to talk with Mr. Shearenberger, who is with the Hartford National, and it is really a travesty to leave this amount of money in at 5½ percent in a passbook account.

THE COURT: The $40,000?

MR. SIMMONS: Yes.

THE COURT: You agreed to that.

MR. SIMMONS: I agreed, but I still think – I mean, it is sitting there and losing an awful lot. I am quoting Mr. Shearenberger, that it could be invested on a daily basis in a market fund and getting more than twice the interest at 5½ percent. Now, whether the adversary is losing it or I am losing it, there are a lot of dollars being lost here unnecessarily. Your Honor, again I suppose I got to choose my words on how I address this problem, but it was mentioned that it is just a travesty that this is sitting there at 5½ percent.

He also mentioned taxes and Mr. Diamond. Well, taxes is another problem down the line which has to be resolved. Your Honor, this is exactly one of the reasons why this ball of wax is unsettled. As long as I am alive, and as long as I got red blood corpuscles through my veins, I am never in my lifetime going to [8] permit any judge to award and make me pay taxes on land that I own. I have been foreclosed for years and in my humble estimation, this is ludicrous. Both the state statute and federal public policy is very clear on it, and still to have it, I say no. This is why it makes it difficult for your

Honor. Mr. Feingold is here listening and he knows it is wrong. He tried to put words into Judge Corrigan's mouth, but to no avail. So, therefore, there is something to be settled.

THE COURT: What did Judge Corrigan handle?

MR. SIMMONS: The taxes.

THE COURT: East Granby?

MR. SIMMONS: There were three different judges involved. Well, first Tambora and then Brennan and the taxes was Judge Corrigan and now it is Judge Dupont.

Getting back to Diamond, this is another dilly, if I may use that word. In my way of reasoning, I feel that the Court has overpaid Diamond based on the information I submitted to the Court last week. I was not in a position this past week to do anything because much to my surprise, I gave your Honor my copy of the affidavit of debt, thinking that I had an additional one or two, which I usually make, and when I went through [9] my file, I could not find a copy of that affidavit.

THE COURT: Is this one of the ones you submitted as an exhibit?

MR. SIMMONS: Yes. Exhibit A.

THE COURT: The clerk would have it.

MR. SIMMONS: I asked Frank, and he said no, Miss Dupont has the file at home.

THE COURT: I think he has the exhibits. I do have the file.

MR. SIMMONS: All right. Well, if he has the exhibit, I will get that. I need that.

THE COURT: I am sure if you see him, he can get a copy made.

MR. SIMMONS: Fine. Well, my position has not changed. I feel enough time has elapsed on both the Rogin matter and the Diamond matter, where we are going into the third month, and I have been pursuing this well over six or seven months officially, since I sent him the letter asking for removal of the lien. I filed the motions to compel and I am still waiting.

My overall position, your Honor, as far as the funds are concerned, which Mr. Bass is referring to, is that no matter how this thing goes, no matter where it ends up, all the monies that are there presently are still going to end up with Mr. Simmons, even if I [10] lose. However, if I prevail with all of the measures that are before the Court presently, then I think Mr. Feingold will have to turn Bradley Field over to Mr. Simmons.

What I am saying to the Court at this point, the Court cannot be jeopardized by making any award either to Mr. Bass, the $40,000, or the monies that have been paid out, if it is an obligation that I have and that I owe, fine. I objected strenuously to the taxes. I felt they should not have been paid. I objected very vigorously against the payment to the attorneys, and still it was paid. Well, maybe it is a lawsuit down the road, I don't know, but the monies came out of the fund over my objection, and they should not have been paid. I am not objecting to this because I owe it. The monies are there and I feel it should be paid. Why should these people be left hanging and

these people are getting old and I recognize that. Well, senior citizens and who knows how much longer they will live. They would like to get a few dollars back and I am fully in accord. I just feel that when I am in accord, and it is my monies, that the Court is not jeopardized by making a favorable decision.

THE COURT: Mr. Feingold.

MR. BASS: Before Mr. Feingold starts, [11] may I be allowed to ask him two questions?

You have no objection to the disbursement of this money to Mr. Allaire and Mr. Valente?

MR. SIMMONS: I have no objection whatsoever. Well, I just forgot to make one note, your Honor. I did ask Mr. Bass in accordance with what your Honor has done, that he put a date of June 24th, on or before June 24th, and the reason being that these monies are down there at Hartford National and the turnover date is June 24th. This is the reason I asked and the reason for the date there. Now, keeping in mind, even if these monies were paid out tomorrow, the amount of loss that would occur in relation to the amount of loss for the period of time, that $330,000 was sitting for eight months with no interest, which was in the neighborhood of between thirty-five and $40,000 that went down the drain with no interest, all because of somebody's bullheadedness. Well, when you get two forces who wouldn't move, and I wouldn't until the Federal judge said why can't they be an [sic] interest-bearing accounts, of course, Mr. Feingold had to move. June 24th was at my suggestion, and I think that your Honor would be in accord with that date. I

don't think it would matter to him whether he gets it tomorrow or June 24th. I am fully in accord.

[12] MR. BASS: Thank you.

THE COURT: Mr. Feingold.

MR. FEINGOLD: Your Honor, I am Victor Feingold, Assistant Attorney General. I have appeared before your Honor on other motions, and in the past I have resisted any further order of the Court which would direct the payment of any monies now in the custody of the Court. I again object to any order of the Court which would direct the clerk to disburse any of the funds now on deposit in the Court. My reasons for the taking of this position are now being set forth by me today before your Honor. I am now going to introduce a new element, which might affect the decision of your Honor, and that is the jurisdiction of your Honor to act on the motion of Mr. Allaire and Mr. Valente, who are seeking each independently an order for disbursements of funds.

Now, the first point I want to make is that the basis for the deposit itself is found in a practice or procedure new to this state and not known to our practice. The office of the Attorney General was confused with how to effect compliance with this stipulated judgment. The Supreme Court of the State of Connecticut in Simmons against Wetherall, and in that case the spelling in the recorded opinion was [13] W-e-t-h-e-r-e-l-l, which is a mistake. Well, it arises out of the case of Simmons against Wetherall, which your Honor recited at the opening of this hearing.

In the Supreme Court opinion, at 180 Conn. 587, the case of Simmons against Wetherall, as reported by the opinion, referred to an appeal by the plaintiff, Augustus J. Simmons, from the denial of a motion to open a judgment. The judgment was recited in the opinion of the Supreme Court as a judgment on stipulation. At page 588 of 180 Conn., the Supreme Court commented on the nature of the case and some of the background, and indicated after extensive litigation, all cases were consolidated. The Supreme Court referred, particularly to a number of pending state cases and the examination of the records and briefs of the Supreme Court opinion will also show that there was pending some federal cases in the United States District Court for the District of Connecticut. The Supreme Court then stated that the parties negotiated a settlement of all cases. I now quote, wherein the plaintiff agreed to sell the land to the State for an agreed-upon price. Our reading of the stipulation and the judgment which purportedly conformed to the stipulation, does result in an uncareful analysis to a simple agreement to sell land for a price certain. Now, thereafter, no action was brought to even enforce [14] this agreement. If the stipulated judgment is viewed, as I claim it must, as an executory contract for the sale of real estate, the statute of limitations have passed and the State of Connecticut is barred from enforcing the agreement by specific performance. Well, I believe the statute is 47-33A. When I discovered in my view that specific performance of an agreement to sell real estate is unenforceable, then all proceedings in accordance with the order of Judge Shapiro regarding the removal of encumbrances that followed this stipulated judgment, are null and void and

cannot properly be even considered. The State can never obtain voluntarily a deed from Mr. Simmons which was contemplated by the parties. The State was ready, able and willing, as the record will show, to pay the agreed-upon price. Mr. Simmons has resisted furnishing the State with an executed deed. Furthermore, Mr. Simmons has made every effort to resist the proceedings in the State court which gives rise to the stipulated judgment. Well, the stipulation and the agreement by bringing an action in the United States District Court attacking the validity of the State court judge.

Now, I have previously furnished to your Honor, a certified copy of the complaint from Mr. Simmons pending in the United States District Court. This [15] morning Attorney Bass is present on his motion, and I do not know if he has actual or constructive knowledge of the fact that there is pending in the United States District Court, a very important civil action, in part a civil rights action, which if tried to conclusion could very well result in a judgment for Mr. Simmons that the State court proceedings violated his rights. I am speaking of the State court proceedings that led to the judgment on stipulation. Now, using that as a piece of evidence, I cannot, in good conscience, ever or anticipate that Mr. Simmons would ever deliver to the State a deed of the specific land within the stipulation for the agreed-upon price. If he will not deliver the deed, and there is no deed of Mr. Simmons in the custody of the court for delivery to the State, as there is money on deposit, then I cannot see why the State funds should be used to start paying his obligation and his bills, because that is all this thing amounts to. Well, to use this money to pay his bills where Mr. Simmons,

himself, resisted it, quid pro quo, and has no intentions of ever delivering a deed to the State for the agreed-upon price.

Now, since this judgment on stipulation is defined by me, and I believe as a matter of law must be defined as an executory agreement for the sale of the [16] land on an agreed-upon price, and unenforceable because of the statute of limitations, the Superior Court cannot entertain an action or specific performance on behalf of the State. Well, the entire matter must be left for further proceedings in an effort to adjust the differences of the parties. The action for the judgment on stipulation cannot be characterized as an equitable claim. It is in no way a condemnation matter brought under any procedures of the State of Connecticut to condemn land for airport purposes or any other purposes.

THE COURT: Excuse me.

(There was a discussion off the record.)

MR. FEINGOLD: I was arguing now that in no way any of the proceedings that gave rise – none of the proceedings following the judgment on stipulation were undertaken in accordance with any of the provisions of 48-11. Now, 48-11 is a statute specifically applicable to proceedings in imminent [sic] domain, whether it is by state agency or the State of Connecticut or any municipality or any condemnor who has the power of imminent [sic] domain. So, 48-11, which gives the Court jurisdiction of monies on deposit, and also upon application to disbursement of funds on a hearing, in no way applies to any of the proceedings in the case of Simmons against Wetherall and related cases. It is true [17] that some of the

consolidated cases did involve efforts by the State to exercise imminent [sic] domain powers for purposes of acquisition of land of Mr. Simmons' for airport purposes. Those efforts were aborted and failed as prior decisions of the Supreme Court will show. So, the funds that are now on deposit do not relate to those earlier cases. In fact, any funds that were on deposit in those cases have since been either paid out or returned to the State treasury. So, as a point of law in this matter, Mr. Bass in no way as he claims to seek disbursements of funds, relied on 48-11.

Now, I am going to the question of another matter that Judge Shapiro seems to assume that he had the power to exercise authority when he entertained a motion of Assistant Attorney General McQueeney for execution of the judgment.

I now direct your Honor, and invite your Honor's attention to another element of jurisdiction in the entire matter of Simmons against Wetherall. I might say that whenever I call your Honor's attention to the question of jurisdiction, in accordance with the law of the State, if lack of jurisdiction is brought to your Honor's attention, I mean subject matter jurisdiction, no matter in what form or in what way, your Honor cannot proceed on any of the proceedings until you [18] resolve the issue of subject matter jurisdiction. If per chance the jurisdiction question is interwoven now with many other prior motions that have not been acted upon, and it has happened, that is arises on the motions of a claimed predictor of Mr. Simmons, it does not matter so long as this Court, the question of jurisdiction is called to your Honor's attention. The second point on lack of jurisdiction that I call your Honor's attention to, is that when Assistant Attorney

General McQueeney came in with a motion for execution of an unsatisfied judgment, a concern of the State Referee, Judge Shapiro, was how to execute it. The judgment was not for money damages. As I recited before, the judgment on stipulation –

MR. SIMMONS: What was that? Would you please repeat that?

MR. FEINGOLD: The judgment was not for the payment of money damages insofar as the State was concerned. It was in favor of Mr. Simmons for the payment of an agreed-upon price for the sale of land. I do not believe that this judgment resulted in the payment of money damages. Consequently, Mr. Simmons could not get execution against the State, nor could the State get execution in the normal way that executions are given under the statute for judgment. So, Jusge [sic] Shapiro heard [19] the stalemate that arose here, and Mr. Simmons stated he was ready, willing and able and agreed to pay the agreed-upon price and refusing to execute and deliver a deed to the State. So, the Honorable Louis Shapiro, State Referee, acting under whatever he believed his statutory powers were as a State Referee, with all the powers of a judge of the Superior Court, undertakes to declare by court order, that title to the land is automatically vested in the State of Connecticut in accordance with the judgment. I refer your Honor to paragraph one of an order of Judge Shapiro, that is found in the case that your Honor recited by docket number in the Superior Court, Simmons versus Wetherall, and also found on page 37 of the Supreme Court records and briefs relating to 180 Conn. at 587. Paragraph one of what purports to be an order of Judge Shapiro contained in four numbered

paragraphs recite prior – paragraph one there is a recitation of a number of matters apparently furnished Judge Shapiro from the Land Records, in East Granby under the name of Augustus J. Simmons. Now, included in the list of matters was the mortgage and agreement of Mr. Diamond, a mortgage of Thomas P. Byrne, a lis pendence of Leonidas Simmons, a judgment of CBT, an attachment of Hartford National Bank, a judgment of the applicant today, Leonard Allaire, [20] Et Al, an attachment of what purports to be an application of the applicant today, Valente, a lease to Angelo Roncari and judgment, lien registration of the applicant today, Patsy Valente, Et Al, and a lis pendence of Patsy Valente, Et Al, another lis pendence of Leonard Allaire, Et Al. Well, in addition, a lease seemingly recorded on March 16, 1978 to Westfield Vallet Parking, Incorporated, and an attachment of David B. Salzman. It appears that in view of all of these matters called to Judge Shapiro's attention, what the state of the title was, Judge Shapiro undertook without any motions before him, and without any proceedings, to enter an order other than the appearance of Mr. Simmons and the State, directing that all encumbrances be removed and that title to the premises described in Exhibit A attached hereto, together with covenance described in Exhibit B attached hereto, against the land described in said Exhibit B is and are vested in the State of Connecticut in accordance with the judgment entered herein.

In no way do I understand that the terms of the judgment on stipulation empower any court to summarily invest title in the State of Connecticut. I take the position that Judge Shapiro had no statutory or any other authority, either as a State Referee, Judge [21] of the

Superior Court or acting as a Judge of the Superior Court, to pass title in this case to the State of Connecticut. It would appear that Judge Shapiro believed he had that power, and in doing so believed that he could now execute in his fashion as a judge, that he had previously entered in accordance with the stipulation. There is nothing in the terms of the stipulation, as I read it, that even obligated Mr. Simmons to execute a deed. Therefore, I come back to what I mentioned before. It is simply an executory agreement for the sale of real estate. Imperfect as it is, and maybe it didn't really accomplish what the parties intended it to do, it now has developed an unenforceable thing in my view. It may very well be that all of the cases that were supposed to have been consolidated and settled in the Superior Court, are not truly settled, and that all cases go back to the status quo they were in including the United States District Court pending cases that Mr. Simmons still will have to litigate in the Supreme Court, his title to the Bradley Field. He still will have to litigate his claim for money damages that was given to him by the Special Act of this Legislature where various defenses have been asserted. We are back with Mr. Simmons battling now in the Superior Court. Well, that is the turn of the screw on this type [22] of case, because I cannot see the way the proceedings have gone at this stage that this judgment can properly be enforced by either party.

Now, another matter was the fact paragraph two, where Judge Shapiro directed the State pay to the clerk these funds. Now, this is a burden on the clerk and that is nowhere statutory and no proceedings to my knowledge that can place a burden on the clerk of the Superior Court

to take money under and executory agreement for the sale of land, even if the State was one of the parties to the agreement. There is no jurisdiction for him to even hold this. As far as item three, that Mr. Simmons vigorously resisted, it was an order that the clerk pay to the tax collector of Granby. Well, paragraph three, and quoting, that the clerk of said court pay to the tax collector for the Town of East Granby the sum of $8,761.29 together with accrued interest, lien in releases from the sum deposited. This order was without due process and there was no notification to the tax collector or the clerk, and there was no notification to Mr. Simmons that such an order would be entered. There was no opportunity for the parties to appear in open court and agree or to present evidence on the nature of this order. The validity of this proceeding thereafter were had in accordance [23] with this order that Mr. Simmons vigorously opposed and Judge Corrigan ruled he must follow the directions of the Superior Court acting through Judge Shapiro.

I submit again, as I believe I did to Judge Corrigan, that if Judge Shapiro had no jurisdiction of the subject matter in the first instance, then his order directing the clerk to release monies and to pay what purportedly was tax bills against the list in the name of Mr. Simmons, that it was illegal, null and void, and Mr. Simmons could very well be right in that the payment of that money was not justified.

Coming to paragraph four –

THE COURT: I believe you have made these before, Mr. Feingold. I wonder if you could maybe

address yourself to your objection to this motion or these two motions, which are for disbursements.

MR. FEINGOLD: Yes. Coming to that last one, the order that would bring anybody into this court, if these orders had any validity, was found in paragraph four of Judge Shapiro's order, where he stated that pursuant to Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrances and lienors described herein, be and are cited to appear before the Court with proof of the amount and validity of their [24] liens or encumbrances, that the clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

Now, while the citation that was issued by the Assistant Attorney General was made and was supposed to have been certified by a deputy sheriff, and Mr. Simmons was not even named as a party on that proceeding, the citation itself does not have any of the allegations necessary to invoke the jurisdiction of this Court under Section 52-44, which is an action to acquire title, nor does that citation have any of the elements necessary to invoke the jurisdiction of this Court under Section 47-31, which is an action of interpleader, and none of the parties apparently have been served, according to the sheriff's return. Well, upon examination of the citation, which is now on file in the Superior Court, and somewhere in this Simmons against Wetherall, Superior Court case, without having its own docket number, have never been defaulted out and their priorities and their equities have never been determined. This simple effort by a motion of both of these

named creditors to seek a disbursement of funds, it doesn't follow any of the requirements for an action, title or interpleader, it [25] must fail. It doesn't address itself properly to enable the Court to even determine the amount and validity of the claim. In addition, the proof would be required more than a motion practice and, at least, there should have been testimony, if not the parties, then a certified copy of the land records indicating indeed that a judgment lien exists on the land records, which is entitled to a priority and also testimony regarding what aspects or what amount of the judgment lien, if any, has been satisfied should be required. In addition, the question of whether interest accrues on the judgment lien and also it has to be claimed and made certain, because the Legislature in enacting the statute on execution on judgment altered the rate of interest, which previous to October 1, 1979 was six percent, and effective October 1, 1979, it became eight percent. If statutory interest is due on the judgment lien, that must be made known. Well, whether the judgment is based on notes or a higher rate of interest, that survives the judgment, and to be paid until it is fully satisfied, we have no way of knowing. Since there is no proof at all of the amount and validity of the claim, without even testimony or certified copies of records, I do not see how you can proceed, even if your Honor should overrule the prior claims that I have made. That is all.

[26] THE COURT: Thank you.

MR. BASS: A very short rebuttal, your Honor. First of all, I would object to Mr. Feingold at this time questioning the jurisdiction of the Court to hear this case. Secondly, your Honor, in Mr. Feingold's recitation that he gave your Honor this morning, I forget which paragraph

he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the Court that in the citation, my two clients were listed under the care of my office. I will state to the Court that I have never been served any citation nor has my client ever been served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter. Secondly, perhaps Section 48-11 is not applicable. I would request that the Court – excuse me. I will withdraw that.

The reason why we may reference to this statute, because it is the only way that the clerk's office could handle disbursements and through their advice on how to try to present a motion for disbursement of these monies, and that is why we made reference to it. My feeling is that this case is a very old case [27] and it has seen many, many motions and actions. There seems to be a substantial problem with the State's end of this case. Now, whether the problems are due to Mr. Simmons or the State, I don't know, your Honor. I have two people that are looking for money that are entitled to money, and there are funds available. I would ask your Honor to weigh all the equities. The Court has a responsibility to all the people and not just the State. If the State has gone over any statute of limitation for any action they may have, that is not a concern of this Court. If the Court has jurisdiction and if all parties submit themselves to the jurisdiction of the Court, I do not feel jurisdiction is a problem at this time.

I would like the Court to realize my clients as well as myself, pursuant to whatever paragraph it was in Judge

Shapiro's decision, that Mr. Feingold referred, were never cited and never served. We had no knowledge of this.

THE COURT: I think I have enough understanding of it. Did you want to say something further?

MR. SIMMONS: I should cap it off, I think, your Honor. I find myself in a very difficult position to follow Mr. Feingold's remarks, because he was vacilating [sic] all the way from left field to center [28] field to right field to home plate. I sort of feel like I have been led out to the woods somewhere and left there. First he said that they don't have any authority and they don't have any jurisdiction, and then he turns around and in the next breath they are entitled – automatically vested to the State. What I want to have your Honor look at is – well, there are so many statutes and so many motions and everything that has been thrown out here and what is happening, I think, Mr. Bass put it correctly, the State has gone out in high water and found itself in the middle of the stream and found itself in trouble. It says maybe we should back up and turn around and try to reach shore again. Their records show, your Honor, there is no denial by anybody that the State has been there for over 20 years. They have not put any monies up for the use of this land for over 20 years and they are still there. The liability is accumulating. As I said in my opening remarks, not only is the money there, but if they are wrong, if they have not defended themselves, there is a hell of a lot more at stake. Well, your Honor would not put yourself in jeopardy by making a decision to favor these people and let them have their money. He said the State funds should not be used to pay the bills. Well, before they put foot on that [29] property, your Honor,

they are supposed to put money up first before that. Here we are 20 years later and how much money there is. He is trying to say we are here and we are staying there and there is no money and your Honor doesn't have the jurisdiction to dispose of any of this money. How ludicrous can this be?

Now, I am preparing a brief for the Supreme Court over a very minimal $8,000, because I was denied a condemnation in '68. I want to read this for the record and into the record. In addition to reasonable and necessary expenses and disbursements due the owner, the obligation becomes more apparent and obviously where the condemnor cannot restore to the owner in an as-before and re-establish the status quo position, such as cutting of trees, bulldozing terrain, obtaining legal injunctions against the owner from enjoying the use of real property for profit, removal of thousands of dollars worth of material without payment, without owner's permission, being ordered by the court to pay taxes on property which the owner was denied access borders on the ludicrous.

THE COURT: Is that an appeal you are taking?

MR. SIMMONS: A decision where I was denied $8,000.

THE COURT: Is that another case?

[30] MR. SIMMONS: Yes.

THE COURT: All right.

MR. SIMMONS: They have tried it so many times and it is about time they do something right. The attempt here is to come into court and confuse your

Honor, and no matter who the judge, if he says yes, no, and they say yes or no, and first he said we are wrong. He admits the Attorney General's office got so confused. I grant you they didn't know which way to go. I have been with this through the proceedings and at one point the Attorney General's office, everybody was going to the clerk's office to ask for some direction. It is a sad state of affairs when they don't know who is on first base.

Now, as far as proof of the validity, I don't think that is Mr. Feingold's responsibility. That is my responsibility. If he wants to charge me 20 percent interest and I am agreeable, that is my responsibility and that is none of his business. Those are my funds that are being allocated and not theirs.

Now, 48-11, your Honor, is the statute that is applicable. If not applicable, then there has to be another statute. The State has no authority to proceed under any undertaking unless they are following some given statute. If 48-11 is not applicable, then I [31] want to know what is applicable, because they cannot operate without operating under the General Statutes. When he said there is no equity in this case, none of the proceedings were under 48-11. It is just back and forth. He has been vacilating [sic] and I couldn't make rhyme or reason of his statements. He said that they didn't have statutory – that Judge Shapiro did not have the statutory authority to pass title. What are they doing there? If these funds are not available, your Honor, to dispense and Judge Shapiro did not have the authority to pass title, then as I said in Federal Court, they have a 24-hour notice off the property. You can't keep going on it for 20 years and using my property and say, hell, you are not going to use the

money either. I think your Honor, you ought to put blinkers on and forget all of these statutes and double talk by the State and look at it from a practical aspect. Well, what has happened and what is happening? I am not going to be redundant. The liability is accumulating. He is very well aware of what happened and aware of the problems confronting the State. There is a means and method. The statutes are very clear. Well, the thing will be resolved. Well, if there was no statute applicable, then it would be a horse of a different color. I grant you I do an awful lot of [32] research myself and I find it very difficult to find a situation where what happens when they fail in condemnation or fail in their attempts in imminent [sic] domain. It is a unique situation. I did find one in New York State and I will give your Honor the quote and you can look at it, too, Mr. Feingold. Well, 205 2d, New York, 626.

THE COURT: Does this have anything to do with these motions which are in front of me today?

MR. SIMMONS: Only in the respect that he is attempting to put a roadblock before all payments. It is a paradoxical situation. Originally they were the ones that triggered the payment and claimed the debt off in the land records. They started it. Well, now we have a turnaround and they are saying, wait, we are not going to pay anybody any more. It is not his money or supposedly not his, it is the State's. That is the only relationship, your Honor. I say that money is mine or equivalent and they have to put a deposit up before they can put a foot on my property. It has not been done and I am treating this as though it were a deposit against the liability that is continuing. These payments should be made and these other

matters should be cleared up. Somebody will have to make a decision.

THE COURT: You say the money that is [33] there has to do not with payment for the land, but a deposit toward whatever future liability may be found?

MR. SIMMONS: That is correct.

THE COURT: All right.

MR. SIMMONS: A portion of the land, your Honor, common sense dictates there is considerable damage here. As I read to you, they took all of the building material and they cut the trees and never paid five cents for it. Then to have Attorney Feingold come in and say none of the money was for damages, and put that on the record, I mean, my God, how much more incriminating can it be? I ask your Honor to act favorably on all of these motions.

THE COURT: Thank you very much.

MR. BASS: If your Honor grants the motion I have prepared the order.

THE COURT: Do you have copies?

MR. BASS: Yes.

THE COURT: All right. Thank you.

* * *

[34] CERTIFICATE

STATE OF	:	SUPERIOR COURT
CONNECTICUT	:	JUDICIAL DISTRICT
CASE NO. 163875	:	AT HARTFORD,
AUGUSTUS SIMMONS	:	CONNECTICUT
VS.	:	JUNE 7, 1982
HORACE WETHERALL	:	

I hereby certify that the within and foregoing (33) pages constitute a true, complete and accurate transcript of the proceedings in the above-entitled matter, heard before Hon. Antoinette L. Dupont, Judge in the Superior Court, Judicial District of Hartford, at Hartford, Connecticut, on June 7, 1982.

Dated at Hartford, Connecticut, this 18th day of April, 1984.

/s/ Harold J. Moan, Sr.
Harold J. Moan, Sr.
Certified Court Reporter

EXHIBIT 10

December 15, 1960

Mrs. Ignace Simmons
Route 20
East Granby, Connecticut

Dear Mrs. Simmons:

It is our understanding that a representative of the Joseph P. Kennedy & Company called on you and your son, relative to negotiating a price for the acquisition by the State of your property located adjacent to Route 20. At that meeting, your son requested that the state indicate the need for this proposed acquisition.

This land, totaling approximately 13.5 acres lies within the approach zone to our instrument runway at Bradley Field. The width and length of this approach zone is established by the State in conjunction with the Federal Government. Under an agreement entered into in 1955, the State and the Federal Government agreed to acquire this parcel of land in the interest of public safety. This agreement was not entered into until all parties had investigated this area and deemed it most necessary that this tract of land be acquired to protect the public.

We hope this information will help to clarify the situation.

Very truly yours,

Donald J. Lynch
Deputy Director

DJL/D

cc: Joseph P. Kennedy & Company

DEPARTMENT OF COMMERCE
CIVIL AERONAUTICS ADMINISTRATION
WASHINGTON 25

GRANT AGREEMENT

Part I – Offer

CONTRACT NO. CICA 36-A

Date of Offer
January 12, 1955
Bradley Field Airport

Project No.
09-06-009-507

TO: STATE OF CONNECTICUT
(herein referred to as the "Sponsor")

FROM: The United States of America (acting through the Administrator of Civil Aeronautics, herein referred to as the "Administrator")

WHEREAS, the Sponsor has submitted to the Administrator a Project Application dated December 2, 1954 for a grant of Federal funds for a project for development of the Bradley Field Airport (herein called the "Airport") together with plans and specifications for such project, which Project Application, as approved by the Administrator, is hereby incorporated herein and made a part hereof; and

WHEREAS, the Administrator has approved a project for development of the Airport (herein called the "Project") consisting of the following described airport development:

"Acquisition of land for 'Doolittle' clear zones both ends Runway 6-24; acquisition of land and

navigation easements for protection of approaches 6-24, 19, 33".

all as more particularly described in the property map and plans and specifications incorporated in the said Project Application;

NOW THEREFORE, pursuant to and for the purposes of carrying out the provisions of the Federal Airport Act (60 Stat. 170; Pub. Law 377, 79th Congress), and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application, and its acceptance of this Offer, as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and the operation and maintenance of the Airport, as herein provided.

THE ADMINISTRATOR, FOR AND ON BEHALF OF THE UNITED STATES HEREBY OFFERS AND AGREES to pay, as the United States' share of the cost in accomplishing the project, 50 percent of all allowable project costs subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this Offer shall be $37,000.00

2. The Sponsor shall

   (a) begin accomplishment of the Project within a reasonable time after acceptance of this Offer, and

   (b) carry out and complete the Project in accordance with the terms of this Offer, and the Federal Airport Act and the Regulations promulgated thereunder by the Administrator in effect on the date of this Offer, which Act

and Regulations are incorporated herein and made a part hereof, and

(c) carry out and complete the Project in accordance with the plans and specifications and property map incorporated herein as they may be revised or modified with the approval of the Administrator or his duly authorized representatives.

3. The Sponsor shall operate and maintain the Airport as provided in the Project Application incorporated herein.

4. The maximum amounts of building space which the Sponsor shall be obligated to furnish civil agencies of the United States for the purposes and on the terms and conditions states in Paragraph 9 of Part III of the Project Application dated May 18, 1949, for Project No. 9-06-009-906-009-801 shall be as set forth in the attached schedule of maximum space requirements which is incorporated herein and made a part hereof.

5. Any misrepresentation or omission of a material fact by the Sponsor concerning the Project or the Sponsor's authority or ability to carry out the obligations assumed by the Sponsor in accepting this Offer shall terminate the obligation of the United States, and it is understood and agreed by the sponsor in accepting this Offer that if a material fact has been misrepresented or omitted by the Sponsor, the Administrator on behalf of the United States may recover all grant payments made.

6. The Administrator reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.

7. This Offer shall expire and the United States shall not be obligated to pay any of the allowable costs of the Project unless this Offer has been accepted by the Sponsor within 60 days from the above date of Offer or such longer time as may be prescribed by the Administrator in writing.

8. It is understood and agreed that the areas delineated on Exhibit "A" as 'Doolittle' clear zones at each of the Runway 6-24 will be maintained by the Sponsor completely free from all structures except these required for aids to air navigation, unless otherwise authorized by the Administrator.

9. It is further understood and agreed by and between the parties hereto that the Project Application dated May 18, 1949 for Project No. 9-06-009-801 is hereby amended by deleting the last sentence of Paragraph 7 of Part III thereof and inserting in lieu thereof the following:

> "The airport approach standards to be followed in performing the covenants contained in this paragraph shall be those established by the Administrator in Office of Airports Drawing No. 814, dated April 26, 1950, unless otherwise authorized by the Administrator".

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and said Offer and acceptance shall compromise a Grant Agreement, as

provided by the Federal Airport Act, constituting the obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and the operation and maintenance of the Airport. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer and shall remain in full force and effect throughout the useful life of the facilities developed under the Project but in any event not to exceed twenty years from the date of said acceptance.

UNITED STATES OF AMERICA
THE ADMINISTRATOR OF CIVIL AERONAUTICS
By /s/ Ora W. Young
Regional Administrator,
Region One

Part II – Acceptance

The STATE OF CONNECTICUT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept said Offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this 1st day of February 1955.

STATE OF CONNECTICUT
(Name of Sponsor)
By /s/ K.H. Ringrose

Title Director of Aeronautics

(SEAL)

Attest: /s/ Mildred P. Allen

Title: Secretary of State

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Jack Rubin, acting as Attorney for STATE OF CONNECTICUT, ~~go here to certify~~: (herein referred to as "Sponsor"), to hereby certify:

That I have examined the foregoing Grant Agreement and the proceedings taken by said Sponsor relating thereto, and find that the Acceptance thereof by said Sponsor relating thereto, and find that the Acceptance thereof by said Sponsor has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Connecticut, and further that, in my opinion, said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at HARTFORD, CONNECTICUT this 1st day of February, 1955.

/s/ Jack Rubin
Title Assistant Attorney General

EXHIBIT 11

STATE OF CONNECTICUT

LOUIS SHAPIRO
STATE REFEREE

SUPREME COURT BUILDING
P.O. DRAWER N. STATION A
HARTFORD, CONN. 06106

July 18, 1980

Jason E. Pearl, Esquire
19 South High Street
P.O. Box 183
New Britain, CT 06050

Re: No. 16 38 75
Augustus J. Simmons v.
Horace B. Wetherell, et al

Dear Mr. Pearl:

This will acknowledge receipt of your Motion For Disbursement of Funds by Clerk dated July 16, 1980 and received by me this morning.

Since your phone call to me, I am not certain as to what steps should be taken in order to make disbursement as requested by you. Since the amount attached by Atty. Salzman et als was accomplished by bringing suit, it would seem to me that before distribution could be made, that this claim be reduced to a judgment. If there is a more expeditious way to proceed, I would appreciate hearing from you as soon as possible.

I'm also concerned about the order of distribution since the land records, according to your memorandum attached to your letter, show a list of encumbrances prior to the date of the Salzman attachment.

Also, is view of the many complications which I anticipate, would it not be better to have this issue handled by the Superior Court? I am not equipped, as a referee to give notice to the various creditors which I believe may be necessary. It would seem that your motion could be handled properly by the Superior Court.

Very truly yours,

Louis Shapiro
State Referee

LS:mcd
cc: Ronald Cassidento, Esquire
William A. McQueeney, Esquire
Enc.: Copy of Motion for Disbursement of Funds by Clerk

EXHIBIT 12

CV-70
CASE NO. 16 38 75

AUGUSTUS SIMMONS	:	SUPERIOR COURT
vs.	:	HARTFORD JUDICIAL DISTRICT
HORACE WETHERALL, ET AL	:	OCTOBER 15, 1991

MOTION TO TRANSFER FUNDS

Since 1978 the Clerk's Office has been the Custodian of moneys deposited in the above case. The money was to be paid out upon consumation [sic] of a transfer of certain real estate by the named plaintiff. Such a transfer has not yet occured [sic].

Attached to this motion are memos from the treasurer of the State of Connecticut and from the Court Operations Unit of the Judicial Branch in explanation of this motion. The Clerk's Office requests the granting of this motion to transfer.

Note – parties have met 11/8/91 and will work out a stipulation to be presented to the Court for the withdrawal of all funds and closing of file.

/s/ Aronson J.
Aronson, J. 16/8/91

/s/ Lucian J. Jachimowicz
LUCIAN J. JACHIMOWICZ
CHIEF CLERK

ORDER

The Court, having heard ther [sic] parties, grants the motion.

_____
Judge

EXHIBIT 13

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS	:	CIVIL ACTION NO.
VS.	:	14806
HORACE B. WETHERELL, ET AL	:	DECEMBER 12, 1977

STIPULATION FOR WITHDRAWAL

It is hereby stipulated and agreed by and between the undersigned attorneys for the respective parties hereto that the foregoing action has been resolved between the parties to their mutual satisfaction and with the permission of the Court the plaintiff desires to withdraw said action with prejudice.

PLAINTIFF

/s/ Augustus J. Simmons
AUGUSTUS J. SIMMONS, Pro Se

By /s/ Stephen Silverman
Stephen Silverman, Esq.
David Salzman

Defendant, State of Connecticut
CARL R. AJELLO,
ATTORNEY GENERAL

By /s/ F.D. Neusner
Assistant Attorney General

Approved: December ___, 1997
United States District Judge

EXHIBIT 13

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS	:	CIVIL ACTION NO.
VS.	:	74-148
ALEXANDER P. BUTTERFIELD, ET AL	:	DECEMBER 12, 1977

STIPULATION FOR WITHDRAWAL

It is hereby stipulated and agreed by and between the undersigned attorneys for the respective parties hereto that the foregoing action has been resolved between the parties to their mutual satisfaction and with the permission of the Court the plaintiff desires to withdraw said action with prejudice.

PLAINTIFF

/s/ Augustus J. Simmons
AUGUSTUS J. SIMMONS, Pro Se

By /s/ Stephen Silverman
Stephen Silverman, Esq.
David Salzman

Defendant, State of Connecticut
CARL R. AJELLO,
ATTORNEY GENERAL

By /s/ F.D. Neusner
Assistant Attorney General

Approved: December ___, 1997
United States District Judge

EXHIBIT 14

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

NEW ENGLAND REGION
12 NEW ENGLAND EXECUTIVE PARK
BURLINGTON, MA 01803

Lease No.: DOT-FA74NE-0369
BRADLEY INTERNATIONAL
ILS-ALS R/W6

LEASE

between
STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

and

THE UNITED STATES OF AMERICA

This LEASE, made and entered into this first day of June in the year one thousand nine hundred and seventy four by and between the State of Connecticut, Department of Transportation whose address is 24 Wolcott Hill, Wethersfield, Connecticut, 06109 for itself and its heirs, executors, administrators, successors, and assigns, hereinafter called the lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

1. For the term beginning June 1, 1974 and ending June 30, 1974, the lessor hereby leases to the Government the following described property, hereinafter called the premises, viz:

As contained in Exhibit I attached hereto and made a part hereof.

a. Together with a right-of-way for ingress to and egress from the premises; a right-of-way or rights-of-way for establishing and maintaining a pole line or pole lines for extending electric power, and telecommunications facilities to the premises; and right-of-way for subsurface power, communication and water liens to the premises; all rights-of-way to be over the said lands and adjoining lands of the lessor, and unless herein described by metes and bounds, to be by routes reasonably determined to be the most convenient to the Government.

b. And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of air navigation and telecommunications facilities.

c. And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which fixtures, additions, or structures so placed in or upon, or attached to the said premises shall be and remain the property of the Government, and may be removed upon the effective date of termination of this lease, or within 90 days thereafter, by or on behalf of the Government, or its grantees, or purchasers of said fixtures, additions, structures, or signs.

2. This lease may, at the option of the Government, be renewed from year to year and otherwise upon the terms and conditions herein specified. The government's option shall be deemed exercised and the lease renewed

each year for 1 year unless the Government gives the lessor 30 days written notice that it will not exercise its option before this lease or any renewal thereof expires; *PROVIDED*, that no renewal thereof shall extend the period of occupancy of the premises beyond the 30th day of June 1994;

4. The Government may terminate this lease, in whole or in part, at any time by giving ninety days notice in writing to the lessor, and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

5. No Member of Congress or Resident Commissioner shall be admitted to any share or part of this lease, or to any benefit to arise therefrom. Nothing, however, herein contained, shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

6. The lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, brokerage, percentage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the lessor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this lease without liability, or in its discretion to deduct from the contract price or consideration, the full amount of such commissions, brokerage, percentage, or contingent fee.

7. The Government shall surrender possession of the premises upon the expiration or the effective date of termination of this lease. If the lessor, by written notice at least thirty days before the expiration or the effective date of termination requests restoration of the premises, the Government at its option shall within ninety (90) days thereafter, or within such additional time as may be mutually agreed upon, either* (1) restore the premises to as good condition as that existing at the time of the Government's entering upon the premises under this lease (changes to the premises in accordance with paragraph 1 above, ordinary wear and tear, damage by natural elements and by circumstances over which the Government has no control, excepted) or (2) make an equitable adjustment in the lease amount for the cost of such restoration of the premises or the diminution of the value of the premises if unrestored, whichever is less. Should a mutually acceptable settlement be made hereunder, the parties shall enter into a supplemental agreement hereto effecting such agreement. Failure to agree to any such equitable adjustment shall be a dispute concerning a question of fact within the meaning of Clause 8 of this lease.

8. (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the lessor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days

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* Subparagraphs a and b only

from the date of receipt of such copy, the lessor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary, Department of Transportation. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the lessor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the lessor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided,* That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

9. The Lessor grants to the Government the right to utilize any existing power lines, control lines, conduits, or other facilities of the Lessor which are adaptable to use in connection with the purpose of this covenant.

10. The Lessor hereby warrants that it has acquired and possesses an adequate real estate right in the property described herein, and that it is authorized to grant to the Government the rights and interests set forth herein.

11. The right of ingress and egress and the right of way herein granted shall insure to the benefits of the Government and its duly authorized agents, representatives, contractors and employees.

12. The Lessor agrees not to erect or to allow to be erected on the property leased hereby or on adjacent property of the Lessor, any structure or obstruction of whatsoever kind or nature as will interefere [sic] with the proper operation of the facilities to be installed by the Government under the terms of this Lease unless consent thereto shall first be secured from the Government in writing. Further, in order to insure the continuing proper operation of the ALS Facility, the Lessor shall prevent the erection of any structure, or the natural growth of trees, brush that will cause that structure or natural growth to:

(a) protrude an area hereinafter referred to as the light plane. For obstruction clearance purposes this light plane is defined as rectangular in shape, 400 feet wide and symmetrically located about the ALS centerline; it shall start at the landing threshold and extend 200 feet beyond the approach end of the system.

(b) prevent a clear line of sight to all lights of the system from any point on a surface, one-half degree below the glide path and extending 250 feet each side of the centerline, up to 1600 feet in advance of the outermost light in the system.

13. In order to insure the continuing proper operation of the Instrument Landing System(s), the Lessor agrees that certain critical and no-parking areas, which are shown on the attached Drawing No. 1-A-3076, shall

be established in the vicinity of the localizer and glide slope facilities.

Where the critical areas lie within the bounds of the Airport, the Lessor agrees not to erect or allow to be erected any structure of any kind or nature nor to perform or allow to be performed any excavating, grading or planting operations within these areas, without the prior concurrence of the Government. Where the critical areas lie outside the bounds of the airport, the Lessor agrees to extend every effort to negotiate agreements with the property owners involved covering these restrictions.

In the event of natural erosion, the Lessor agrees to perform corrective grading, planting and excavation within the critical area. Such work shall be accomplished during a period which is mutually agreeable to both Lessor and Lessee. Where the critical and no-parking areas lie within the bounds of the airport, the Lessor agrees not to permit the presence of parked aircraft, vehicles or equipment within the critical and no-parking areas, or of free moving aircraft or vehicles within the critical areas which are not under the control of tower personnel when the facilities are in operation. The Lessor agrees to provide and maintain no-parking signs within these areas, when required.

Where the critical and no-parking areas lie outside the bounds of the Airport, the Lessor agrees to extend every effort to negotiate agreements with the property owners involved granting the Lessor the right to establish and maintain no-parking signs on their properties within these areas.

The Lessor further agrees to provide and maintain markings as required, on all paved areas to delineate the limits of the critical area.

14. The Government waives the requirement for radio control of traffic in the vicinity of Runway 6 Localizer on the North Perimeter Road.

15. For and in consideration of the benefit to the Bradley International Airport and the general public using same, the Lessor agrees to and grants to the Government all terms and conditions stated herein at no cost.

16. This lease will supersede License DOT-FA73NE-0308 on commissioning of the CAT-II ILS system.

17. The Lessor further agrees that in the event that relocation or modification of the FAA's facilities associated with air navigation or components thereof hereinbefore described is made necessary by airport improvements or changes made or caused to be made by the airport owner (the term "airport owner" used herein refers to the political subdivision or other competent authority responsible for the airport operation and capital improvements), the costs of such relocation or modification shall be chargeable to the Lessor; that the Government shall have the exclusive right to determine how the relocation or modification project shall be accomplished including, but not limited to, the engineering, site selection, procurement of equipment; construction, installation, testing, flight inspection and recommissioning of the facility; that upon submission by the Government of an estimate of the relocation or modification costs, the Lessor shall transfer to the Government the funds required for the relocation or modification; that in the event the

actual costs of relocation or modification exceed the estimate submitted by the Government the Lessor shall pay only the actual costs; that the Government shall have the exclusive right to determine when a relocation or modification of a facility or component thereof has been made necessary by airport improvements or changes made or caused to be made by the airport owner, and that this decision shall be final. It is agreed by and between the Lessor and the Government that in the event the actual costs of relocation or modification of a facility or component thereof is less than the estimate submitted by the Government the Lessor shall pay only the actual costs.

18. The following changes were made to this Lease prior to execution:

a. Deletion of certain wording in paragraph 2.

b. Deletion of paragraph 3 in its entirety.

c. Addition of certain wording in paragraph 7.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date indicated.

WITNESSES

/s/ Sandra L. Barones

/s/ Madeline P. Mckinnis

STATE OF CONNECTICUT
DEPARTMENT OF
TRANSPORTATION

By /s/ Joseph B. Burns (Seal)
Joseph B. Burns
Commissioner

Date: June 11, 1974

/s/ George J. Bates

/s/ Susan R. Pitt

UNITED STATES OF AMERICA
DEPARTMENT OF
TRANSPORTATION

By /s/ Roland O. Bisson Jr. (Seal)

Date: May 24, 1974

This Agreement is made with the approval of the undersigned, under the provisions of Section 13b-42(b) of the General Statutes of Connecticut, as revised.

/s/ C. Perrie Phillips
Deputy Attorney
General
State of Connecticut

Date: JUL 26 1974

/s/ Gerald J. Nelson
Deputy Commissioner of
Finance and Control
State of Connecticut

Date: 6/25/74

I, Lucien A. Benjamin chief, Logistic Division of the New England Region, Federal Aviation Administration certify that Roland O. Bisson Jr. is duly authorized in his capacity as the Realty Contracting Officer of the New England Region, Federal Aviation Administration, to enter into

Lease DOT-FA74NE-0369 with the State of Connecticut for the premises cited therein.

/s/ Lucien A. Benjamin
Chief, Logistics Division

If agreement is made with a State, County, Municipality or other public authority, the following certificate shall be executed by an authorized official:

I, Gloria Schaffer certify that I am the Secretary of the State of the

State of Connecticut
(State, County, Municipality, or other Public Authority)

that Joseph B. Burns who signed said agreement on behalf of the State of Connecticut was then Commissioner, Department of Transportation of said State of Connecticut that said agreement was duly signed for and in behalf of said State of Connecticut by authority of its governing body, and is within the scope of its powers.

[SEAL]

/s/ Gloria Schaffer
(Signature) (Corporate seal)
Gloria Schaffer
Secretary of the State
of Connecticut

EXHIBIT 15

TOWN CLERK'S CERTIFICATION
OF RECORD COPIES (Sec. 7-23)

STATE OF CONNECTICUT) OFFICE OF THE TOWN
) CLERK TOWN OF EAST
COUNTY OF HARTFORD) GRANBY

I, Laura B. LaFond, Assistant Town Clerk of the Town of East Granby, duly appointed and qualified according to law and having custody of the seal of the said Town, hereby certify that the annexed instrument is a true copy from the Land records of said Town, and that the original instrument from which said copy is taken is recorded on Page 657 Volume 59

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Town,

this 28th day of November A.D., 1995.

/s/ Laura B. Lafond
Assistant Town Clerk

NO. 163875	)
AUGUSTUS J. SIMMONS	: SUPERIOR COURT
V.	: HARTFORD COUNTY
HORACE B. WETHERELL, ET AL	: JUNE 2, 1978

Present: Hon. Louis Shapiro, State Trial Referee

SUPPLEMENTAL JUDGMENT

This action by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the first Tuesday of February, 1970, and thence to December 13, 1977, when this action was consolidated with the following cases:

No. 202121 State of Connecticut v. Augustus J. Simmons;

No. 140965 State of Connecticut v. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;

No. 199230 Augustus J. Simmons v. Samuel Kanell, et al; and

No. 162923 Augustus J. Simmons v. Frank C. Parizek et al;

and said cases were referred to the undersigned and thence to January 4, 1978, when the parties appeared and stipulated as to judgment as on file and thence to the present time when the parties appeared on the defendants' motion for execution on judgment.

The Court, having heard the parties, finds that Augustus J. Simmons has refused to perform according to a stipulation for judgment and judgment dated January 4,

1978, and further finds that the defendants, Commissioner of Transportation and State of Connecticut, have offered and continue to offer to perform their obligations in accordance with said judgment.

The Court finds that taxes in the amount of $8,761.29, including interest, are due and owing to the Town of East Granby.

The Court, having heard evidence of an examination of the land records of the Town of East Granby, further finds that the following persons claim to have an interest in said premises by virtue of liens or encumbrances placed against said premises in accordance with the land records of said Town.

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
54/607	A	Jerome H. Diamond	Mtg.	7/9/73	$20,000
55/690	A	Jerome H. Diamond	Mod. of Mtg.	6/20/74	—
55/692	A	Jerome H. Diamond	Mtg.	6/27/74	$ 5,100
55/731	A	Thomas P. Byrne	Mtg.	7/8/74	$ 4,000
57/62	ABC	Leonidas D. Simmons	L/P	3/3/76	Divorce
57/385	ABC	C.B.T.	Judg.	6/11/76	$ 962.97
57/426	ABC	Htfd. Nat'l Bank	Attach.	6/21/76	$2,625.00
58/95	C	Lenard Allaire, et al	Judg.	3/15/77	$11,104.00
58/221	C	Patsy Valente, et al	Attach	4/28/77	$3,000.00
58/301	A	Angelo Roncari	Lsc.	5/24/77	—
59/253	C	Patsy Valence, et al	J/L	3/7/78	$2,490.00
59/263	C	Patsy Valente, et al	L/P	3/13/78	$3,000.00
59/266	C	Leonard Allaire, et al	L/P	3/13/78	$13,000
59/283	Portion of Parcel A	Westside Vallet Parking, Inc.	Lse.	3/16/78	
59/419	AC	David B. Salzman, et al	Attach.	4/20/78	$105,000

WHEREUPON, IT IS ORDERED

1) That all encumbrances be removed and that title to the premises described in Exhibit A, attached hereto, together with covenants described in Exhibit B, attached hereto, against the land described in said Exhibit B is and are vested in the State of Connecticut in accordance with the judgment entered herein.

2) That the State of Connecticut pay to the Clerk of the Superior Court for Hartford County the sum of $385,600 in accordance with the provisions of said judgment.

3) That the Clerk of said Court pay to the tax collector together with secured interest, lien, and release fees for the Town of East Granby the sum of $8,761.29/from the sum deposited.

4) That pursuant to Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrances and lienors described herein be and are cited to appear before the Court with proof of the amount and validity of their liens or encumbrances, that the Clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

/s/ Louis Shapiro
Louis Shapiro
State Trial Referee

CITATION

TO THE SHERIFFS OF THE COUNTIES OF HARTFORD AND NEW HAVEN, THE DEPUTIES OR EITHER CONSTABLE OF THE TOWNS OF HARTFORD, WEST HARTFORD, MERIDEN, WAREHOUSE, POINT, NEW BRITAIN, AND EAST GRANBY, WITHIN SAID COUNTIES.

GREETINGS:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to summon Jerome H. Diamond, 25 Arlen Way, West Hartford, Conn., Thomas P. Byrne, Esq., 790 Farmington Avenue, West Hartford, Conn., Leonidas D. Simmons, c/o Danaher & Danaher, Esqs., 51 Parker Avenue, Meriden, Conn., Connecticut Bank & Trust Co., One Constitution Plaza, Hartford, Conn.; Hartford National Bank, 777 Main Street, Hartford, Conn., Leonard Allaire, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Patsy Valente, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Westside Vallet Parking, Inc., c/o Charles Gersten, Esq., 234 Pearl Street, Hartford, Conn., David B. Salzman, c/o Jason Pearl, Esq., 19 S. High Street, New Britain, Conn., and Angelo J. Roncari, P.O. Box 268, East Granby, Conn. and them [sic] summon to appear before the Superior Court to be held in the County of Hartford at Hartford, on the first Tuesday of July, 1978, at 10:00 o'clock in the forenoon, said appearance to be made by said Jerome H. Diamond, Thomas P. Byrne, Leonidas D. Simmons, Connecticut Bank & Trust Company, Hartford National Bank, Leonard Allaire, Pasty Valente, Westside Vallet Parking, Inc., David B. Salzman,

and Angelo J. Roncari, or their attorneys, on or before the second day following said return date, then and there to answer unto the Commissioner of Transportation of the State of Connecticut, of the Town of Wethersfield, County of Hartford, in a civil action, wherein the plaintiff complains and says:

Each Lienor, encumbrancer and/or party cited herein shall state whether or not he or they claim any estate or interest in or encumbrance on the property described herein or any part thereof, and, if so, the nature and extent of the estate, interest or encumbrance which he or they claim, and he or they shall set out the manner in which such estate, interest or encumbrance is claimed to be derived.

PLAINTIFF,
COMMISSIONER OF
TRANSPORTATION
STATE OF CONNECTICUT

BY: CARL R. AJELLO
ATTORNEY GENERAL

/s/ William A. McQueeney
William A. McQueeney
– 85340
AAG-Trans-6
P.O. Box 120
Hartford, Connecticut 06101

EXHIBIT A

PARCEL I

A certain piece or parcel of land, containing 5.97 acres, situated in the said Town of East Granby on the northeasterly side of Route #20, also known as Rainbow Road, and also known as Parcel C on a map entitled: "Property of Anastasia Simmons east side – Rainbow Road, East Granby, Conn. W.M. Alford Civil Engineer Windsor Conn. Scale 1 inch = 60 ft. October 1964", which map is on file in the Town Clerk's Office in said Town of East Granby and being more particularly bounded and described as follows:

Beginning at a point in the northeasterly side of Route #20 in the Town of East Granby which point is Six Hundred Ninety-Three (693) feet southeasterly from the southeasterly corner of land now or formerly of Charles Comer, as measured along the northeasterly line of Route #20;

Thence N 20° 27' 30" E along land now or formerly of Charles A. Simmons, Eight Hundred Sixty and Forty-Six One-Hundred-ths (860.46) feet to a point;

Thence S 29° 09' 50" E along land now or formerly of the State of Connecticut, One Hundred Sixty-Three and Seventy One-Hundredths (163.70) feet to a point;

Thence S 22° 23' 40" W along land now or formerly of the State of Connecticut, Eighty-One and Twenty-Four One-Hundredths (81.24) feet to a point;

Thence S 09° 18' 30" W along land now or formerly of the State of Connecticut, Fifty-Nine and Forty-Seven One-Hundredths (59.74) feet to a point;

Thence S 02° 13' 40" E along land now or formerly of the State of Connecticut; Ninety-One and Fifty-Five One-Hundredths (91.55) feet to a point;

Thence S 05° 06' 30" W along land now or formerly of the State of Connecticut, One Hundred Three and Seventy-Nine One-Hundredths (103.79) feet to a point;

Thence S 09° 29' 00" E along land now or formerly of the State of Connecticut, Seventy-Three and One One-Hundredths (73.01) feet to a point;

Thence S 03° 59' 20" W along land now or formerly of the State of Connecticut, One Hundred Seventeen and Four One-Hundredths (117.04) feet to a point;

Thence S 16° 13' 10" W along land now or formerly of the State of Connecticut, One Hundred Forty-Eight and Forty-Four One-Hundredths (148.44) feet to a point;

Thence S 20° 3' 00" W along land now or formerly of the State of Connecticut, Two Hundred Seventy-Four and Forty-Six One-Hundredths (274.46) feet to a point in the northerly line of Route #20.

Thence along a curve whose radius is 1834.86, a distance of Four Hundred Fifty and Ninety One-Hundredths (450.90) feet to the point or place of beginning.

PARCEL II

Said parcel as hereinafter described is shown on a map entitled: "Town of East Granby Map showing Property of Department of Transportation Rainbow Road – Route #20 Scale 1"=40' Karl F. Crawford Transportation Chief Engineer – Bureau of Highways January, 1978", which map is on file in the East Granby Town Clerk's Office.

A certain piece or parcel of land located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford and State of Connecticut, containing 1.12 acres, more or less, bounded and described as follows:

Beginning at the intersection of a former town road, a/k/a Bush Road and Old Route #20 approximately 348 feet from the East Granby-Windsor town line as measured along the northerly line of Old Route #20;

Thence proceeding westerly along highway line known as Old Route #20 as shown on said map, a distance of 522 feet, more or less;

Thence in a northwesterly direction a distance of 66 feet, more or less to other land of Simmons;

Thence in an easterly direction a distance of 420 feet, more or less to the center of a former town road, a/k/a Bush Road;

Thence southeasterly along the center line of a former town road, a/k/a Bush Road, a distance of 230 feet, more or less to the point of beginning.

PARCEL III

A certain piece or parcel of land situated in the Town of East Granby, County of Hartford and State of Connecticut, consisting of 2.2 acres, more or less, as shown on a certain map entitled: "Town of East Granby Map showing Property of Dept. of Transportation of The State of Connecticut Rainbow Road – Route 20 Scale 1"=40' January 1973 Karl F. Crawford Transportation Chief Engineer – Bureau of Highways Revised 2-24-73 Town No. 39-Misc. Project No. 5001 Serial No. 17 & 17A Sheet 2 of 2", which map is on file in the Town Clerk's Office in said Town of

East Granby, and being more particularly bounded and described as follows:

NORTHERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, One Hundred Seventy-Four (174) feet, more or less;

EASTERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, Four Hundred Twenty-Five (425) feet, more or less;

SOUTHERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Thirty-Eight (338) feet, more or less; and

WESTERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Seventy-Eight (378) feet, more or less.

EXHIBIT B

A certain piece or parcel of land bounded and described on a map entitled "Town of East Granby – Map showing property of Augustus J. Simmons – Rainbow Road – Route 20 – Scale: 1 in. = 40 feet. Dated February 2, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Retained Premises".

Augustus J. Simmons covenants with the State of Connecticut that, with regard to the "Retained Premises", the following covenants and restrictions shall run with

the land and shall be effective so long as Bradley International Airport or its successor in title or name, continues to operate as a State or Federal Airport:

A. Height Restriction

No building, tree, tower, antenna, smokestack or flagpole, or any other structure or growth, natural or manmade, shall be allowed above the maximum elevation of 215.5 feet above sea level.

B. Lighting

No exterior lighting will be constructed or installed unless said lighting conforms to Federal standards in force at all times. Said standards are presently set forth in 14 Code of Federal Regulations Sections 77, et seq. Notice of any proposed construction shall be given to the Commissioner of Transportation at the same time it is given to the Federal Aviation Administration. In the event that prior approval from the Federal Aviation Administration, for this construction is required by 14 C.F.R. Sections 77, et seq. copies of said request and approval shall be sent to the Commissioner of the Department of Transportation for the State of Connecticut.

C. Right of First Refusal

The State of Connecticut shall have the right of first refusal in the event Grantor shall desire to sell the "Retained Premises". Such first refusal, however, shall be subject to the following conditions:

a) Grantor shall give to State of Connecticut written notice which notice shall state the terms and conditions of a bona fide written offer to the Grantor from a third party.

b) State of Connecticut shall have the right to purchase said "Retained Premises" by notifying the Grantor in writing within 90 days of receipt by State of such written offer. Such purchase by State shall be on the same terms and conditions as the offer received by Grantor from such third party.

c) In the event that State shall exercise its right to purchase in accordance with this paragraph, notice of its intent to exercise as provided in paragraph (b) shall be accompanied by a certified check to the order of Augustus J. Simmons heirs or assigns in the amount of 10% of the purchase price which shall be a deposit toward the purchase price of said "Retained Premises".

d) The transfer of title in accordance with the terms of such offer shall take place on or before thirty (30) days after receipt by Grantor of notice of State's intent to exercise its right of first refusal.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever, agree that the Premises owned by the State of Connecticut shall be used for aeronautic purposes, including the operation of all types of aircraft, both conventional propeller driven and jet powered, as well as any other type of aircraft not heretofore operated from the airport, including but not limited to helicopters, and I further covenant and agree for myself, my heirs, administrators, and assigns that neither I nor any success [sic] in interest of mine, will have any cause, claim or

right of action against the State of Connecticut, or any of its successors in interest, as a result of aeronautics operations on, over or through the Premises owned by the State of Connecticut as the result of noise resulting from said aircraft operations as it may affect the Retained Premises. This covenant and agreement shall also run with the land and shall be construed as a real covenant running with the land unless and until such time as, by agreement with the State of Connecticut, its successors assigns, this covenant is terminated.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever and my successors in interest specifically waive and relinquish any rights in law or equity relative to said noise from aeronautics operations relating to the Retained Premises.

STATE OF CONNECTICUT)
Hartford County) ss
)

(SEAL)

I, Thomas H. Abraham, Clerk of the Superior Court of said State within and for said County, HEREBY CERTIFY the foregoing to be a true copy of record, of the Supplemental Judgment, in No. 163875, Augustus J. Simmons vs Horace B. Wetherell, et al.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Superior Court, at Hartford, in said County, this 5th day of June, 1978

/s/ Thomas H. Abraham CLERK.

EXHIBIT 16

CLOSING REMARKS of proceedings held on April 19, 1978, at the offices of ROGIN, NASSAU, CAPLAN, LASSMAN and BORDEN, ESQUIRES, 111 Pearl Street, Hartford, Connecticut.

APPEARANCES:

Augustus (Ozzie) Simmons

John Kataja

David Salzman, Esq.

Stephen Silverman, Esq.

Ned Rogin, Esq.

Phillip Robbins, Esq.

F. D. Neusner, Esq.

Dennis Cemeriva Esq.

Robert L. Hirtle, Esq.

Reported by:

William G. Crampton
Certified Shorthand Reporter
Notary Public

* * *

[8] delivery of the deeds, of course.

MR. HIRTLE: Mr. Simmons, as I understand it you don't want to proceed further with the closing, is that correct?

MR. SIMMONS: Bob Hirtle, I have the highest respect for you just like I sent you the letter, I have the

highest and utmost respect for Referee Shapiro and I further qualified it by saying that I am not going to be a party to any deal which is going to be coming out and being made public whereby the Rogin firm and my good friends here, Dave Salzman and Steve, who I have been very prone to pick on. It is just not fair to everybody to have this kind of an arrangement and I am not going to be a party to it. What the State is attempting to do here is to say okay let's date this thing back so their skirts are clean. They want me to go back and do battle with the Town over the taxes and I say bullshit to that. We are going to clear that matter up before their will be any Goddamned closing. We are going to get that cleared up and they are going to be open and above board. I don't care if it is Referee Shapiro. Hell, it is everybody and I'm telling you, everyone at the table, everything is going to be above board and no dealing is going back to November of '64.

MR. HIRTLE: You will not sign a deed today to consummate the closing, is that what I understand?

MR. SIMMONS: Because the agreement states and [9] I have to say if any portion of it is a nullity then it is a nullity and I am not going to be a party to anything that is a nullity.

MR. NEUSNER: Is that a definite negative answer?

MR. HIRTLE: You are instructing counsel not to proceed with the closing because you consider it to be a nullity?

MR. SIMMONS: I am going to answer you Bob by saying that I sent you a certified letter expressing my position and when I talked to you on the phone, I said to myself, at least I am going to give them the courtesy of putting in an appearance today. I think that is a sufficient answer.

MR. HIRTLE: So I am not to proceed to closing and you will not sign the deeds today?

MR. SIMMONS: That is correct.

MR. HIRTLE: And the meeting is adjourned.

(Whereupon at 11:44 o'clock a. m. the closing was adjourned).

* * *